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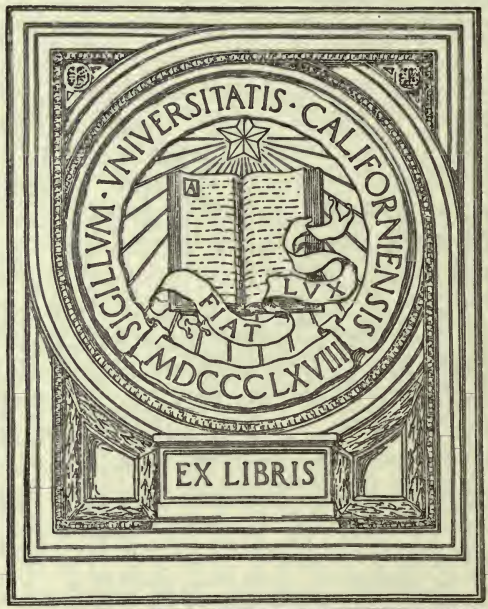
Samuel D. Lockwood.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Early Illinois settler, Judge, Trustee of Ill. Cent. R.R. etc.

Sam'l D Lockwood

LIFE AND TIMES

OF

HON. SAMUEL D. LOCKWOOD

BY WILLIAM COFFIN.

CHICAGO:
KNIGHT & LEONARD CO., PRINTERS,
1889.

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INTRODUCTION.

"The most substantial glory of a country is in its virtuous, great men. Its prosperity will depend on its docility to learn from their example.

"That nation is fated to ignominy and servitude for which such men have lived in vain."

The real history of Illinois must be found in the lives of her eminent men. This statement will bear repeating, as at least, inviting careful consideration.

The real history of Illinois must be found in the lives of her eminent men, and we shall look in vain for it elsewhere. The growth of our state has been phenomenal, and with a good degree of commendable pride, we look over the tables indicating our progress in all material things. But statistics are not history, and the columns of figures, furnished by our census bureau, give only the skeleton of state organization and development. For all beauty and expression of form and feature, we must look elsewhere, and for the hidden springs of life, the vital forces that underlie all development, we must look far deeper, even down to where living souls think and feel, plan and resolve.

The old adage has come down to us from the dark ages, "Peace has no history," and the record of former centuries, abounding in tales of bloody strife and savage warfare, seems to prove the adage true for those times. Fortunately, however, a change has come in these latter days, or Illinois would have no history outside our our Indian conflicts.

On our soil there are no marked battle-fields, no places renowned for even traditional achievements in arms, and our war

CHAPTER I.

GENERAL SUMMARY AND TESTIMONIALS.

HON. SAMUEL D. LOCKWOOD was a resident of the state of Illinois from 1818 to 1874, and for over fifty years was in the public service, holding during that period, under state and national appointment, the following positions of high trust and responsibility. In 1821 he was elected state's attorney by the general assembly of Illinois; the next year he was appointed secretary of state by Governor Coles; in 1823 he was appointed, by President Monroe, receiver of public moneys in the Edwardsville land office; and in the following year was elected by the general assembly associate justice of the Supreme Court of Illinois, which position he held till the adoption of the new state constitution in 1848. He was state trustee of the Illinois Central Railroad from the organization of that company until his death in 1874; and was charter trustee in each of the state institutions established for the benefit of the insane, deaf and dumb, and blind. The foregoing brief outline indicates something of Judge Lockwood's standing in the state, something of the esteem with which he was regarded by his fellow-citizens, and something of the influence he must have exerted in that period of our state history when a few of our good and wise men were laying the foundations of those civil, social and educational institutions which have secured for us our present prosperity, and are a standing proof of the wisdom and fidelity of the great men into whose labor we have entered.

All the prominent men, who were intimate with Judge Lockwood through this period, and associated with him in the various relations of life, with remarkable unanimity speak of him as being eminently wise in council, earnest and persevering in action, faithful and honest in every position of trust, dignified in

deportment, kind and tender in all friendly relations, with a loyalty to truth and right commanding the admiration of all who knew him, irrespective of all party or sectarian differences.

The influence of such a man can not be overestimated, and as the fathers respected and honored him, so the children should venerate and love him.

But where shall the writer find detailed proof of all this? The eye-witnesses, who would gladly give their testimony, have, with but few exceptions, passed to that world from which no voices come back to us. The work accomplished abides in its beauty and grandeur, but the names of the architects are not engraved on the polished stones.

Judge Lockwood was a remarkably quiet, unobtrusive man, never putting himself forward, even unwilling that his name should be prominent in connection with any great enterprise; never seeking honor for himself, nor envious of others who bore the honor that was really his due. It is not known that he ever made a public address, or published any newspaper articles over any signature which would mark him as the author.

In all the important questions that arose from day to day, he felt an earnest interest, and took an active part, but his words are unrecorded. He wrote many letters, but he kept no copies, and the parties addressed failed to preserve them. In times of excitement, of political and social outbursts of passion, his quiet serenity, good practical common sense, and confidence-inspiring integrity, stood as a restraining influence far more beneficial than the loud declamations even of those who had right on their side.

In the recorded proceedings of the Supreme Court of our state his decisions are marked pre-eminently by a clear understanding and full comprehension of the great principles of common law, and these principles, interpreted and applied by a good practical common sense, have made those decisions standard authority for bench and bar. But these decisions are for the law student, and they indicate but a small part of the service he rendered the state as one of the justices of its Supreme Court.

Before entering upon the details of Judge Lockwood's life, I would append here a few letters from some men who were to some extent associated with him and knew him personally.

Many others might be given, but they are all alike in a definite, clear, general statement, but greatly deficient in those details which would help the writer in a biographical sketch.

Dr. Edward Beecher, President of Illinois College, from 1830 to 1844, now of Brooklyn, New York, writes as follows: "I can not enter into any details of the life of Judge Lockwood, nor of his legal services to the community. But I can say, that during an acquaintance of over twenty years, of which fourteen associated me with him as a trustee of Illinois College, I have seen in him incorruptible integrity, and wisdom, as a counsellor in all things, with an unwavering devotion to sound principles and the public good in every position he held. His life, in all its relations, public and social, was spotless, and I think he had the entire confidence and warm affection of the whole community in which he lived. His services to the cause of liberty in the early history of the state deserve a warm recognition; but those who lived in the state before I came to it, can speak of them more intelligently than I. I am glad that you are preparing a memorial of so eminent a man among the fathers of the state.

"Yours fraternally,

"Edward Beecher."

From Dr. T. M. Post, of St. Louis, we have the following: "I became acquainted with Judge Samuel D. Lockwood and his family on my first going to Jacksonville, in the spring of 1833, and was for a time domiciled in the same house with them. Judge Lockwood was then in the strength of a noble manhood. He was a man I felt happy and honored to regard as a friend to the close of his life. There was in his character a rare blending of elements,—a modesty, gentleness and delicacy well-nigh feminine, and great general kindliness, combined with intrepid firmness of principle, a large practical wisdom, distinguished judicial ability and integrity, and a personal purity and honor as stainless as a star. He was a man of large and generous public spirit and forecast, a friend of schools and churches, of liberal culture, public improvements, benevolent institutions, and civil order and liberty. He was a most important beneficent power in founding and shaping the early history and civilization of Illinois.

"In all relations, social, civil, and especially in those of the home, I recall him as a man to be honored, admired and loved, and ever to be remembered gratefully by the grand state of which he was among the early founders."

Hon. Newton Bateman, President of Knox College, gives the following almost filial tribute: "It is a labor of love to record some of my impressions of Judge Lockwood. His name is indelibly associated with the recollections of my youth and early manhood. That name was to me the synonym of integrity and purity. I can not express the reverent love I felt for him. He was one of the few ideal men whom I have known. His influence over me was very great; how much it has had to do in turning me toward whatever of good I may have done, or tried to do in life, and from the unworthy in aims and plans, can only be known when the factors of character are revealed at the last great day. It will remain a lasting regret that I could not have seen more of him in his later years, and been near him at the sunset of his sweet and beautiful life."

CHAPTER II.

PARENTAGE AND EARLY LIFE.

OF Judge Lockwood's parentage and early life, we know but very little, and have no means of filling up the blank spaces.

His father, Joseph Lockwood, was born December 3, 1764, and was married to Mary Drake, October 9, 1788; probably in Poundridge, Westchester county, N. Y., for there their son, Samuel, the subject of our memoir was born, August 2, 1789. Of the father's business at this time, and of the length of the family residence at Poundridge, we have no information. At some time within the following ten years, the family removed to New York City, where the father kept a hotel, having in his household, in addition to those already mentioned, a second son, Jesse Close, born January 7, 1791; a daughter, Rebecca Ann, born March 25, 1792; and a third son, Cornelius, born November —, 1793. Here the father died of yellow fever, October 25, 1799, the youngest son dying of the same disease two days previous. Thus the mother was left with three small children and with slender means of support. This trial brought with it a burden of care, which must have greatly affected Samuel's character. By this event his plans for a liberal education were broken up, and he was thrown very much upon his own resources.

On September 27, 1800, his mother was married to Duncan McCall, and immediately removed with him to Canada, taking with her the youngest child, Rebecca Ann; but leaving her two sons with relatives in New York state. How Samuel was employed the next three years we do not know, except that he spent a few months at a private school in New Jersey, where, he says of himself, he acquired some knowledge of arithmetic, and enough of Latin to be able to decline a few nouns, and conjugate

a few verbs. How he studied arithmetic, we know from his own hand, for the lessons were all given orally, and written out by the pupils, and his work is still retained in possession of the family,—quite a little volume, remarkable for its neatness and accuracy.

In August, 1803, he went to live with his mother's brother, Francis Drake, a lawyer, of Waterford, New York, where he remained as law student and errand boy, until February, 1811, when he was licensed to practice law, and opened an office in Batavia, N. Y.

Of this uncle, Judge Lockwood always spoke with the greatest esteem and affection. In his house he found a true home, and its Christian influence affected his whole life. And here it may be said of Judge Lockwood, as was said of John Quincy Adams, he never had a boyhood. In early years he met the stern realities of life, which left no time for boyish or manly sports, and as a consequence he had no relish for such things, and very little sympathy with those who had. This, of course, does not refer to home entertainment, for he was pre-eminently a home man, in full sympathy with everything that would increase the happiness of home, and bring enjoyment to the family circle.

Of Mr. Lockwood's professional life, while in New York, extending over a period of nearly eight years, we have little information, except from his own pen. For the first four years it was a hard struggle with disease and pecuniary embarrassment. He was in debt to friends for the necessary means for reaching his new residence, and for support, till he could in some way help himself. Though in a new country, he found the legal profession well filled, and in it some men of reputation and experience, able to absorb all the business.

This period included the war time when everything was depressed to the lowest point. Judge Lockwood, naturally diffident and retiring, feeble in physical constitution, with a tendency to self-depreciation, and far separated from all family friends, must have passed through trials of which few have any conception; and his final success is an evidence of that sterling worth of character, which in after life was universally ascribed to him.

We gain some insight into this part of his life from some letters written to his parents and sister. It will be remembered that his mother, after her second marriage, had moved to Canada, taking with her her only daughter. At the time of writing these letters, he had been entirely shut away from these friends by the disturbances of the war, for over three years, and the only way of communication with them was through private parties. Two of these letters are here given in full, as revealing his own feelings, and presenting a picture of those troublesome times.

AUBURN, N. Y., May, 1815.

MY DEAR FATHER AND MOTHER:

It is with feelings of satisfaction never before experienced by me, that I acknowledge the receipt of your letter by Capt. Metcalf. Friends of the dearest and nearest kin, whom I had feared were swallowed up by the dreadful convulsions that have recently agitated our respective countries, have at once been restored to me after tedious years of suspense and anxiety for their safety. Such unexpected blessings call for my most ardent gratitude to Providence for His kind and beneficent protection extended towards them, and I think you will sincerely join with me in expressions of gratitude to Him who has saved you and your family from the sufferings attendant upon the late conflict.

The information your letter contains of your prosperous circumstances gives the highest satisfaction, as I greatly feared you had shared the fate of thousands in the late war by being despoiled of your all.

The information you desire respecting myself, I shall attempt to give you, although I am but a poor hand to write about myself. When I saw you last, I informed you of my intention of opening an office at Batavia. This I carried into effect in the fall after, and had a tolerable prospect of doing well had I staid; but the season happened to be extremely sickly, and numbers died in the village with fevers, which impressed me with a belief the place was extremely unfavorable to health. This, together with the circumstance that I was greatly troubled with sores and boils, which the physician informed me was owing to the badness of the water, and that it was not probable I could be cured

without going to some of the springs, I determined to leave there, and removed to Sempronius, in this county, in January, 1812. The complaint I contracted at Batavia, I did not get rid of until about a year after, and I am satisfied, had I staid there, I should never have recovered.

I remained in Sempronius a year and eight months. In the time I did but very little business, owing in some measure to my being but little acquainted in the county, and the place affording but little to do. I was, however, while there, appointed to office of Justice of the Peace, and Master in Chancery, which with my business enabled me to support myself decently, but did not enable me to pay the debts I had contracted before I got into business. These offices I was turned out of this spring, in consequence of a change of the council of appointment from federal to democratic.

In November, 1813, I moved to this village, and my business has been on the increase ever since. I am in partnership with a young man of the name of Throop, and I think our office bids fair to be as reputable, and do as much business as any in the county. But I do not flatter myself that I shall ever become rich, or even possessed of property to any extent; but shall be satisfied with such a share of business as will creditably support me through life.

You request information relative to the share taken by our friends in the late war. As to Jesse and myself, we have been inactive spectators. Uncle Samuel (Drake) was called out in the fall of 1812 to Sackett's Harbor and was on duty for three months. He commanded a company of artillery, but was in no action. Uncle Elijah (Drake) was out three months in the fall of 1813 on the Niagara River. He was first lieutenant in an artillery company. He was once up near Burlington Heights. I believe he was in no engagement, but was out at the time of the burning of Newark, but had nothing to do with that dis graceful affair. Uncle Jasper has had three of his sons out for three months each, as privates in the militia. None of the rest of our friends have been in the service.

Our friends in this country were in usual health when I heard from them last, and will be much pleased when they hear of your safety and welfare.

Rebecca Ann writes me that she and her husband contemplate making a visit this winter, and that she expects you will accompany them. I am very anxious that you should come out, as it is very inconvenient for me to pay you a visit this year. I should like to know your conclusions, for if you can not come out, my desire to see you is so great that I shall endeavor to prevail on some of our friends to go out with me next winter, but I greatly prefer your making us a visit first.

I am very solicitous to learn what progress Duncan (his half-brother) has made, and if you have schools in your neighborhood which he can attend. I wish you to impress it on him that I shall be very much disappointed if he does not make the best use of his time when he has an opportunity to go to school.

* * * *

Under the same date he writes as follows to his sister, who had been married several years before, at the early age of seventeen, to Col. Jacob Potts, a very worthy gentleman:

AUBURN, N. Y., May, 1815.

DEAR SISTER REBECCA:

The receipt of your affectionate letter has filled my mind with emotions of the tenderest kind. The regard of a brother for an only sister, whose very existence had almost been buried for a number of years, has recalled to my mind all those social and affectionate feelings which a brother is capable of entertaining towards so near a relative.

The time which has elapsed since I last saw you has been a very painful one to me. I have continually been agitated with doubts and fears respecting your situation, and I had almost despaired of ever hearing from you again; but a merciful Providence has otherwise ordered, for which I feel in the highest degree grateful to Him who disposeth everything according to His will.

It gives me great pleasure to learn from your letter, as well as from father's, that notwithstanding all the evils the country around you has sustained by the late unhappy war, that these have not reached you, and that your husband's circumstances have continued prosperous, and I join you most heartily in your wish that the peace lately concluded may prove a lasting one.

The situation in life in which you are placed, is in every respect a very desirable one, and much better than that of either of your brothers. You are blessed with a good husband, and I hope, fine children, and every necessary that can add to the real enjoyment of life. We, on the contrary, are in some measure unsettled in life, exposed on the great ocean of time to storms and tempests, without having any fixed and certain home. Thus situated on your part, I think you can not fail of being happy yourself, and of making those about you happy, and in order to do this, I hardly need tell you how necessary it is for you to consult in everything the happiness of your husband—this is the mainspring that ought to guide all your actions—and in so doing you consult that of yourself and your children.

* * * *

The uncle, Samuel Drake, mentioned in these letters, was a physician of considerable eminence in Troy, N. Y., a man of much general intelligence and a true friend to his nephew, who regarded him with almost filial affection. This uncle did much for his nephew in way of advice and encouragement, and seems to have understood and appreciated his character, as will be seen by the following extract from a letter written June 18, 1816, in reply to one in which Mr. Lockwood had made some disparaging remarks of himself.

"As to yourself, I have but one remark to make; and that is, the man of real merit is always the last to suspect his own excellence. If this be true, as I believe it is, I hope one day you will be able to give yourself a better character than the one you have drawn.

"Your friends, one and all, are of the opinion that you only want confidence to enable you to become eminent; this you will no doubt attain by practice. The want of it in a lawyer is *unpardonable*."

From the foregoing letters we learn that Mr. Lockwood remained in Batavia about a year, then removed to Sempronius, where he remained some twenty months, then removed to Auburn, where, on February 9, 1815, he entered into partnership with Geo. B. Throop, Esq., which partnership continued with most pleasant relations till August 18, 1818, when it was

terminated on account of Mr. Lockwood's determination to remove to another state. Mr. Throop was a brother of Enos T. Throop, a man of considerable influence, at that time a member of congress, and some years later governor of the state. The business of the co-partnership thus formed increased rapidly, and Mr. Lockwood soon gained a position which in a few years would have made him eminent in his own state. He paid up his old indebtedness, gave his younger brother a start in business, and had the necessary means at hand for engaging in a new enterprise.

Why he left this promising position we learn from his own pen. "My close attention to business produced a severe attack of dyspepsia, and I was advised by my physician that I must quit my profession, and engage in some out-door employment, or die. This was a severe blow to me, as I did not feel able to engage in any other business. Soon after, I met a gentleman from St. Louis, who gave a very favorable account of Illinois, and its future prospects, and stated that the practice of law there was mainly done on horseback. This met my case exactly, and I sold out my business on favorable terms, and in October, 1818, I started for Illinois."

The following commissions granted Mr. Lockwood while a resident of New York are interesting from their quaintness, as well as forming a part of his biography.

Hezekiah Ketchum, Esquire, Lieut. Colonel Commandant of the Regiment of Militia, in the town of
[SEAL.] Half Moon, in the County of Saratoga and State of New York—

To Samuel D. Lockwood, GREETING:

By virtue of the powers and authority vested in me, I do by these presents, reposing especial Trust and Confidence in your attachment to this State, and the United States, Courage and good conduct, constitute and appoint you, the said Samuel D. Lockwood, Serjeant Major in the said Regiment. You are therefore carefully and diligently to discharge the duty of a Serjeant Major, commanding the said Regiment to obey you as such, and yourself to observe such orders and instructions, as you shall from time to time receive from me, or other your

superior Officers, according to the Rules and Discipline of War, pursuant to the Trust reposed in you; for which this shall be your sufficient warrant.

Given under my hand and seal this twenty-second day of June, 1808.

H. KETCHUM, Lieut. Col. Commandant.

At the time of this appointment Mr. Lockwood was only nineteen years of age.

THE PEOPLE of the State of New York, by the Grace of God, Free and Independent:

To Samuel D. Lockwood—GREETING:

We, reposing especial trust and confidence, as well in your Patriotism, Conduct and Loyalty, as in your Integrity, and readiness to do us good and faithful service, Have appointed and constituted, and by these Presents Do appoint and constitute you, the said Samuel D. Lockwood, Pay Master of the regiment of Militia in the County of Saratoga, whereof Hezekiah Ketchum, Esq., is Lieutenant Colonel Commandant.

You are therefore to take the said Regiment into your care, as Pay Master thereof, and the Officers and Soldiers of that Regiment are hereby commanded to obey and respect you as their Pay Master, and you are also to observe and follow such Orders and Directions, as you shall, from time to time, receive from our General and Commander in Chief of the Militia, of our said State, or any other, your superior Officer, according to the Rules and Discipline of War, in pursuance of the trust reposed in you; and for so doing, this shall be your commission, for and during our good pleasure, to be signified by our Council of Appointment.

IN TESTIMONY WHEREOF, We have caused our seal [SEAL.] for Military Commissions to be hereunto affixed:

WITNESS our trusty and well beloved DANIEL D. TOMPKINS, Esquire, Governor of our said State, General and Commander in Chief of all the Militia, and Admiral of the Navy of the same, by and with the Advice and Consent of our said Council of Appointment, at our City of Albany, the 11th day of February in the year of our Lord One Thousand Eight

The People of the State of New-York, by the grace of God Free

and Independent: To all to whom these Presents shall come, GREETING:—**Know Ye**, that WE, reposing especial trust and confidence in the ability and integrity of *Samuel D. Lockwood of our county of Cayuga Esquire* **have** nominated, constituted and appointed, and by these presents **do** nominate, constitute and appoint him the said *Samuel D. Lockwood a master of the court of Chancery* in and for our said *State of New York* hereby giving and granting unto him the said *Samuel D. Lockwood* all and singular the powers and authorities to the said Office belonging or appertaining: **to have and to hold** the said Office of *Master of the Court of Chancery* in and for our said *State* together with the fees, profits and advantages to the same belonging, for and during our good pleasure, to be signified by our Council of Appointment. **In testimony whereof**, WE have caused these our Letters to be made Patent, and the Great Seal of our said State to be hereunto affixed.

Witness our trusty and well-beloved *DANIEL D. TOMPKINS*, Esquire, Governor of our said State, General and Commander in Chief of all the Militia, and Admiral of the Navy of the same, by and with the advice and consent of our said Council of Appointment, at our City of Albany, the *Twelfth* day of *March* in the Year of our Lord One Thousand Eight Hundred and Thirteen, and in the Thirty-Seventh Year of our Independence.

Daniel D. Tompkins

Passed the Secretary's Office, the 10th day of March 1813.

Reuben Van Rensselaer **Secretary.**

Hundred and eleven, and in the Thirty-fifth Year of our Independence.

Passed the Secretary's Office the 21st day of May, 1811.

ANTHONY LAMB, Dep. Secretary.

DANIEL D. TOMPKINS.

In preparing to come to Illinois, Mr. Lockwood secured a large number of letters, of introduction and recommendation, addressed to prominent individuals in various places in the Northwest. Many of these were never used, and copies of some of them are here given, as indicating the reputation he had established, and the high esteem in which he was held by his associates.

AUBURN, New York, Oct. 14, 1818.

SIR:

We, the undersigned, members of the Court and Bar of the County of Cayuga, having been informed that you are about to remove from this County and to establish your residence in the Territory of Illinois, avail ourselves of the occasion to express to you the high sense we have constantly entertained of your learning, integrity and talents; and to assure you that wherever you may go, you will be followed by our grateful remembrance, and our ardent prayers for your health, prosperity and happiness.

TO SAMUEL D. LOCKWOOD, Esq.

Signed by E. T. Throop, Gershom Powers, and twenty-one others of the Cayuga court and bar.

AUBURN, State of New York, Oct. 19, 1818.

DEAR SIR:

I beg leave to introduce to your acquaintance my much esteemed friend, Samuel D. Lockwood, Esq., a highly respectable member of the bar in this state. He is on his way to Illinois, where he intends to establish his residence.

Any information, or advice, which you may please to give him, in relation to that territory, will be grateful to him. I take pleasure in making Mr. Lockwood known to you.

Most cordially your friend,

JOHN W. HULBERT.

To Gen. WM. H. HARRISON, Cincinnati.

AUBURN, CAYUGA CO., N. Y., October 19, 1818.

DEAR SIR:

Presuming on our short acquaintance during the first session of the 14th Congress, I take the liberty of recommending to your particular notice and acquaintance my friend, Samuel D. Lockwood, Esquire, the bearer of this.

Mr. Lockwood is about to remove to your state, with a view of settling there; and if virtue, talents, learning and assiduous application to business, command distinction and prosperity, I am sure he has a right to claim them.

He has been a resident for many years in this village, during which period he has established the character of a profound and able lawyer, and an honest and honorable man.

I avail myself of this occasion to assure you of my profound respect and regard. E. T. THROOP.

HON. BENJAMIN STEVENSON.

Mr. Throop at this time was a member of Congress, and some years after was governor of New York. He lived to an advanced age, and nearly fifty-six years after the date of the above letter, the writer of this sketch sent him a copy of it, with an obituary notice of Judge Lockwood, showing how fully his friendly recommendation had been substantiated by over fifty years of faithful service, and was much gratified by the receipt of the following reply:

WILLOWBROOK, AUBURN P. O., N. Y., June 5, 1874.

MY DEAR SIR:

The kindness of your act in sending me a notice of the death of my esteemed friend, Judge Lockwood, with the document accompanying it, has been truly appreciated, although so long unacknowledged. You will find sufficient reason, I trust, in recollecting the infirmities usually accompanying exceeding old age—and in my case, accompanied by want of eyesight, so that I shall be obliged to use an additional pair of spectacles to read what I have written.

To lose a friend like Judge Lockwood is painful, but it is inevitable; yet it is a pleasant thing to know that he lived always in the respect of those who knew him intimately, and

that he discharged all the various duties of the various public offices which the partiality of the public imposed upon him.

To me it is truly flattering and grateful to know this, and that he retained to the last a loving memory of his friendship for me. The good deeds of men live after them.

Please present my condolence to all his relatives in your region, and believe me Your grateful friend,

E. T. Throop.

CHAPTER III.

REMOVAL TO ILLINOIS—FLATBOAT TRIP DOWN THE ALLEGHENY AND OHIO RIVERS.

IN the summer and fall of 1818 newspapers of the country were filled with glowing accounts of the Great Northwest, with prophecies of its rapid advancement, and exciting representations of its wonderful resources soon to be developed. Attention was especially directed to Illinois, by the discussion in Congress relating to its admission as a State into the Union. Several of Mr. Lockwood's young friends, knowing of his intended removal, joined with him in a plan of making the journey on a flatboat down the Allegheny and Ohio rivers. Accordingly a party of ten, whose names will appear hereafter, was formed, with the agreement to join in the purchase of a flatboat and necessary supplies for the trip. Each one might take such private property for use or trade, as he desired. This party met at Olean Point, as it was then called, the latter part of October, and there purchased a boat, procured the necessary supplies, and without chart or pilot, or any experience in that or any other line of navigation, started on their trip. It was a grand enterprise, in which any young man of energy and spirit would have been glad to participate.

The voyage was made without any incidents worthy of record. The weather was fine, the river in good stage of water; the party was made up of young men from the best families, some of them well educated, and with good standing in various professions and lines of business. The feeblest one in the party was assigned to the cooking department, supposing there the work would be lightest, but within a week this was found to be the hardest position on the boat. The "feeblest" man was glad to resign and take his place at the oars. The oars were used not as a propelling but steering power, and had to be kept ready for

immediate use to prevent running ashore, or striking some island or other obstruction in the river.

At Pittsburg Mr. Lockwood procured a book for the use of the party, bearing the accompanying title page. [See page 26.]

This book must have been very interesting, as well as helpful to the party, with its full description of the river and directions to the navigator, with glowing accounts of the country in general, and of the thriving villages and cities soon to be. To the reader of the present day, it is both interesting and amusing, with its rough wood-cut of different sections of the river, looking like pieces of a great serpent, with a map of Pittsburg for its head, and its descriptions of places and things as they were seventy years ago. The only thing in it for us now is the following entry on the fly-leaf, the heading in the handwriting of Mr. Lockwood, and the rest in that of William H. Brown:

SHIP ILLINOIS.

CAPTAIN LITTLE, *Master.*

Descended the Ohio in the months of November and December. Cargo: Live stock principally. Consigned to State and Territory of Illinois and Missouri. Sales indifferent, and prospects bad.

Samuel D. Lockwood and William B. Rochester, supercargoes; James Morrison, first mate; Thomas Rochester, second mate; Doctor Woodworth, surgeon.

DAVID E. CUYLER,
DANIEL CURTIS,
JOHN C. ROCHESTER,
WILLIAM H. BROWN, } *Seamen.*

This ship Illinois, in the persons of two of its crew, Samuel D. Lockwood and William H. Brown, brought to our state as valuable a cargo as ever entered any of her ports.

The party reached Shawneetown about the 20th of December, without accident, except an occasional wetting in getting their boat off sand bars or clear of snags, and all in excellent health and spirits.

On their way down the Ohio, they passed a steamboat, the first any of the party had ever seen. They had looked for this

THE

NAVIGATOR,

CONTAINING

DIRECTIONS FOR NAVIGATING THE

MONONGAHELA, ALLEGHENY, OHIO, AND MISSISSIPPI RIVERS;

WITH AN AMPLE ACCOUNT

OF THESE MUCH ADMIRED WATERS,

FROM THE HEAD OF THE FORMER

TO THE MOUTH OF THE LATTER;

AND A CONCISE

DESCRIPTION OF THEIR TOWNS, VILLAGES,

HARBORS, SETTLEMENTS, &c.

WITH MAPS OF THE OHIO AND MISSISSIPPI.

TO WHICH IS ADDED

AN APPENDIX,

CONTAINING

AN ACCOUNT OF LOUISIANA

AND OF

THE MISSOURI AND COLUMBIA RIVERS,

AS DISCOVERED BY THE VOYAGE UNDER

CAPTS. LEWIS AND CLARK.

TENTH EDITION.

PITTSBURGH,

PRINTED AND PUBLISHED BY CRAMER & SPEAR,

FRANKLIN HEAD, WOOD STREET.

1818.

with a great deal of interest. Alas! how disappointing the longed-for sight; an immovable hulk, the machinery still, fires extinguished, hard aground on a sand bar, waiting for some moving in the waters to recover it from its impotency. The flatboatman's occupation was not yet gone.

The following incident the writer has learned from many conversations between Judge Lockwood and Mr. Brown, where the story was told with a good deal of mirth on the part of one and not a little indignation manifested by the other.

On leaving Auburn, the party changed most of their funds, at the suggestion of a bank president there, into new bills of his bank, just from the engraver. At Olean Point, payments for the flatboat and other purchases were made in these bills. When everything was ready for the trip down the river, the party spent the night in their cabin, expecting to start early the next morning; but their slumbers were disturbed by the arrival of the sheriff with a posse, who arrested the whole company as a band of counterfeiters. The storm of indignation that arose can be imagined, but not described. The young lawyers had a chance to show their oratory, but the sheriff must perform his duty. The whole party was marched off to the justice's office. A brief explanation opened the eyes of the justice, and the parties were discharged without trial, but the indignation did not subside. Olean Point never had any friends aboard the "ship Illinois."

The most amusing part of the story is the way in which it became public. The members of the party agreed among themselves never to mention the affair to others, and as there were few newspapers in those days, with correspondents greedy for local items, the whole matter was for several years kept quiet; but some seven or eight years after, when Judge Lockwood was holding court in Edwards county, a man was brought up for trial, who, to the surprise of his counsel and against their advice, insisted upon a change of venue on the ground that the judge was prejudiced against him. When assured by the counsel that this could not be, and pressed for the reason for his feeling in the case, he told the story of the arrest of the counterfeiters; that he was the sheriff that made the arrest, and was afraid the judge

would recognize him. The story was too good a joke to be kept quiet, and the secret was out.

Soon after reaching Shawneetown the flatboat party was broken up, and the comrades of the voyage were separated, never to come together again. Lockwood and Brown, who had been warm and intimate friends in Auburn, determined to keep together and to make Illinois their home. Of the others, very little is known to the writer; William B. Rochester returned to New York and became a prominent citizen, as a member of Congress and a candidate for governor, losing the election by only a few votes.

Lockwood and Brown made the trip from Shawneetown to Kaskaskia, the state capital, a distance of 120 miles, on foot, expecting to reach their destination on Christmas, but, wholly unaccustomed to that mode of traveling, the progress was slower than calculated, and they did not enter the village of log cabins until the 26th of December.

On Christmas day, Lockwood and Brown were passed by two young men, in some sort of a vehicle, bound, like themselves, for Kaskaskia, and coming to stay. These young men were Thomas Mather and Sidney Breese, men afterwards prominent in the history of our state, and in this wayside chat these four young men, all from New York, commenced an acquaintance which lasted through life.

CHAPTER IV.

ILLINOIS TERRITORY.

IN January, 1809, Congress passed an act dividing the Indiana Territory, and giving to Illinois a distinct and independent political existence. It was a magnificent domain, with territorial boundaries including the present states of Illinois and Wisconsin; and ever since the days of Marquette and Joliet, a wonderland, with its limitless water courses, its vast plains, rich, fertile and beautiful, beyond description; its inexhaustible stores of coal, iron and lead, and fabulous surmisings as to precious metals.

What is to be the history of this new territory, so blessed of God in all natural resources? What is its influence to be in the councils of the nation?—in the history of the country? Shall this new territory be barbarian, or civilized? Catholic or Protestant? Cursed with slavery, or blessed with freedom? These are the unsolved questions of the day, but questions that demand a speedy answer. These vast issues are trembling in the balance. Slight influences, a few men, even a single man, may turn the scale. The outlook is not promising. There is nothing in the established institutions, and very little in the character of the people to inspire hope. Hardly a Protestant church, or mission station; scarcely a schoolhouse, or Christian teacher to be found in the land. More than 30,000 Indians still hold undisputed possession of nine-tenths of this territory—Indians wronged, revengeful, savage. One more added wrong may combine these roving tribes under some efficient leader, threatening the extermination of the white settlers. Of the 10,000 population enumerated in the census, one-fifth are the old French settlers, with their dependents and negro slaves, unambitious, pleasure-loving, good-natured, but intensely Catholic, with no sympathy with our republican and Protestant institutions. These, concentrated and

united, exert a controlling influence. The remainder of the population is made up of everything, the soldier element largely prevailing, old rangers familiar with Indian warfare. Quite a number who had come, under Col. George Roger Clark, in the old Virginia expedition, to capture Illinois, charmed by the beauty and richness of the country, determined to make it their home. At Shawneetown, and less important points on the rivers, were collections of flatboatmen engaged in river traffic, rough, profane and godless. Sprinkled in among all these were a few of a better class, but all adventurers, fortune seekers, honest and enterprising in many cases, but with no higher ends or motives in life. Very few names have come down to us from that early period worthy of consideration.

Pierre Menard, as leader of the French settlers, was perhaps the most influential. A good man he is called, but a Catholic, a slaveholder, and an earnest advocate of slavery.

William Morrison, who came from Philadelphia to Kaskaskia in 1790, was the merchant prince of the northern Mississippi valley, and with a partner resident in Philadelphia, and branch houses in Pittsburgh and New Orleans, he built up a trade, and established commercial relations hardly surpassed in these days of vast enterprises. He brought into this new country, in his own person and family, an element of civilization, culture and refinement, for those rough times; and his success in business brought around him, in later years, quite a colony of relatives and friends from the old Quaker state; but he became a Catholic and died in full sympathy with that church, and his example was followed by not a few of his associates. This is not strange, for this was the only church organized, and in this way only could the new settlers have their children baptized, or secure a ministerial marriage service, or a Christian burial.

Where shall be found the leaven of truth and righteousness, to act in this vast mass of error and corruption? The Christian church is not yet aroused to any realizing sense of the important work to be done. Missionary societies have not yet been organized, except for immediate home work; but the danger is imminent; something must be done, and done speedily. In this crisis President Madison, as one of the first acts of his administration,

rendered to the new territory most valuable and important service; and the state of Illinois, and the whole country, are under lasting obligation to him, for the kind of men he selected to fill the official stations under his appointment. These were not needy partisans to be rewarded for party service, nor restless adventurers seeking employment; but they were, without exception, men of high character, cultivated manners, and already holding important positions in other localities. In accepting the appointments, they came to the new territory with the intention of making it their home, to give to it their life work, and to secure for it those influences and institutions, which would insure its permanent well-being. The most prominent of these men were Ninian Edwards, governor; Nathaniel Pope, secretary of state: Jesse B. Thomas and Stanley Griswold, judges, each of whom is worthy of a much more extended notice than can here be given.

Governor Edwards was born in Maryland, and was brought up under the best educational and social influences of his native state. Removing in early life to Kentucky, he there entered upon a successful career as a lawyer, and had reached the high eminence of chief justice of the supreme court of that state, when he received his appointment to the new territory. He retained this position of governor till Illinois was admitted as a state, when he was chosen United States senator. In his official capacity as governor he secured the enactment of wise laws, did much to secure the peace, tranquillity and prosperity of the people, and through all the Indian troubles of that period adopted and carried out such wise and just measures as secured the new settlements from savage raids. He was conciliatory, but firm and energetic in all his movements, and undoubtedly saved southern Illinois from what might have been a second Chicago massacre.

Secretary Pope, better known as Judge Pope, a native of Kentucky, was a lawyer of marked ability, refined and scholarly, with all those traits of character which would make him a power for good in his new home. In 1816 he was chosen territorial delegate to Congress, and in that capacity secured the passage of a measure which must be regarded as the most important legis-

lative act relating to our state; and the credit of it is due to him alone. This was an amendment to the act admitting Illinois as a state, which changed the northern boundary from a line running due west from the southern extremity of Lake Michigan to latitude 42° 30′, giving to the new state a strip of land about fifty miles wide. It would take a long chapter to give Judge Pope's reasons for this amendment, and a still longer one to show its influence on the history of the state and nation.

Judge Thomas was delegate to Congress from Indiana Territory at the time of its division, and the principal agent in securing that division. He was a lawyer of marked ability, and a gentleman of high standing, morally and socially, but he had already made himself prominent as an advocate of slavery, and in the subsequent history of Illinois was a leader on the pro-slavery side. He was president of the convention which formed our state constitution, and was elected the first United States senator.

Judge Griswold was from New England, the only representative from that section; but he brought with him his Puritan habits. As Governor Reynold says of him, "He was a correct, honest man; a good lawyer; paid his debts, and sung David's Psalms."

These men did not come alone. They brought with them their families. Those from the south brought with them their domestic servants. They were followed also by many of their relatives and acquaintances, and their homes became centres of hospitality, refinement and Christian influence. When, a few years later, Samuel J. Mills came to the territory, as the pioneer home missionary and Bible agent, from Connecticut, he found at the home of Judge Griswold in Shawneetown a hearty welcome, and a little band of sympathetic workers; and at Kaskaskia a like welcome from Governor Edwards and Judge Pope, whose names head the list in the first Bible society formed, and whose influence quieted all Catholic opposition to this Protestant work.

One act passed by the Indiana legislature in 1807 and adopted by the new territory, must here be noticed. This was an act, providing for the introduction of negroes and mulattoes into the

state, by their owners, coming from slave states, containing provisions under which these so-called servants could be held in absolute slavery. This was in direct violation of the ordinance of 1787, and was a dark blot on the fair fame of our state, and subsequently resulted in a cruel and oppressive system of servitude. The first result was, however, beneficial, as it enabled many families of wealth, culture and refinement, to come to the new territory, who otherwise could not have endured the privations and hardships of a new country. In 1810, the number of such indentured and apprenticed servants was over 600, and in the next ten years increased to 1300.

We pass over nine years of territorial history, and find great and important changes. The growth has been wonderful. Organized counties have increased from two to fifteen, giving so many centres of population and influence; the number of settlers has increased fourfold. Some of the pressing questions have been settled. The Indians, greatly diminished in number, broken in spirit, and shut up in well-defined reservations, have ceased to be a terror. The Catholic element has remained about stationary, and its influence so far diminished that we may say Illinois is safely Protestant. The free states have sent some of their best men to the new territory, and New England ideas and convictions are asserting themselves in various localities. The steamboat has made its trial trip on the western waters, and will revolutionize the commerce of the Mississippi valley. Some issues, however, still hang in the balance. Shall Illinois be a New England or a Texas? The home of Christian culture and refinement, or of border ruffianism? By its admission to the Union, shall the domain of freedom or slavery be extended? The influence of a few men may decide the question. And thus Illinois enters upon its history as a free and independent state.

CHAPTER V.

LIFE IN ILLINOIS FROM JANUARY, 1819, TO JANUARY, 1825.

AS we have seen, Lockwood and Brown entered Kaskaskia December 26, 1818, entire strangers to the country, and without an acquaintance in the state; but they were just the kind of men that were needed at that time, and both soon found friends and plenty of work. One of these friends has already been mentioned, and he was in every respect a true friend, and was ever after remembered by Mr. Lockwood with the highest esteem and affection. This was Nathaniel Pope, now just appointed by President Monroe judge of the United States District Court for the new state. He soon after appointed Brown clerk of his court, a most desirable position; and he seems to have appreciated Mr. Lockwood at first sight, for after an acquaintance of only a few days, he gave him this letter of recommendation:

KASKASKIA, January 8, 1819.

DEAR SIR:

Mr. Lockwood, the bearer of this, bore letters to me, introducing him as a gentleman of integrity and talents. I have found him all that his friends represent him to be.

He contemplates a visit to St. Louis, and I am anxious to make you and him acquainted. I have, therefore, pressed upon him this letter to you. Knowing that you can not fail to be pleased with him, I shall esteem you my debtor for introducing into your society one so agreeable and intelligent.

I am, dear sir, with sentiments of the most sincere friendship,

Your obedient servant,

NATHANIEL POPE.

WILLIAM C. CARR, Esquire, St. Louis, Mo.

This letter was not used, as Mr. Lockwood's first impressions of St. Louis were not favorable, and the first sight of slavery

made him turn his back upon it. The next two years were spent in the ordinary legal practice peculiar to a new country. A large part of his time was taken up in arranging cases and preparing legal documents for other attorneys, who greatly needed help in this direction. He remained in Kaskaskia only a year, when, as he states it, "finding practicing law on horseback was no joke, and influenced by the advice of friends, who represented the Wabash country as affording a better position for practice, with better prospect of success, I removed to Carmi, where I resided another year."

At the second session of the Illinois legislature, January, 1821, which was held at Vandalia, the new seat of government, then a perfect wilderness, Gen. White, senator from White county, really without Mr. Lockwood's consent, presented his name to the legislature as a candidate for the position of attorney-general, and after twenty-one ballotings, and a part of two days spent in the contest, he was elected to that office. The principal opposing candidates in this contest were James Turney, Theophilus W. Smith and Henry S. Dodge, all well known in the subsequent history of the state. The greatest number of votes cast was forty-two, and the friends of the different parties, being about equally divided, made a hard fight.

This election to office rendered another change of residence necessary, and Mr. Lockwood re-crossed the state and located at Edwardsville, in 1821.

While in Carmi, Mr. Lockwood formed an acquaintance with William Wilson, afterwards chief justice, and with whom he was associated on the bench for twenty-four years. Between them there always existed a strong friendship. In January, 1821, Mr. Lockwood, in company with Judge Wilson and Henry Eddy, made a horseback trip from Carmi to Vandalia, an incident of which is thus reported, in "Flower's History of the English Settlement in Edwards County," as showing some features of the country at that time.

"In journeying alone, or in company, great risks were run from floods, loss of way, and sudden change of temperature, especially in the winter season. Judge Wilson, Mr. S. D. Lockwood, and Mr. Henry Eddy, of Shawneetown, undertook to

reach Vandalia from one of the counties on the Wabash, a little north of us. The distance by section lines was about sixty miles, across the country, through prairie and timber, without road or track of any kind—no kind of habitation, not even the humblest cabin, in the way. Wilson took the lead, as the best woodsman. They continued to ride the whole of a fine winter's day, without seeing a man or his abode. Towards evening, the weather changed; it became very cold, with the wind blowing in their faces a heavy fall of snow.

"In this predicament, without food or fire, there was but one alternative when night came on. Each man seated himself on his saddle, placed on the ground, with the saddle-blanket over his head and shoulders, holding by the bridles their naked and shivering horses. It continued to snow for hours. For a long time they sat in this condition, thinking they should all freeze to death before morning.

"They afterward tied their horses, and spread a blanket on the ground near a fallen tree, and then squatted down close together —Lockwood in the middle—and thus they spent the long and dismal night.

"In the morning they proceeded as they best could, and before noon reached the east bank of the Kaskaskia river, then booming full, at flood water. They all had to swim their horses across, Wilson again taking the lead. Dripping wet, all three rode into Vandalia, in the midst of the frost and snow of mid-winter. Lockwood, a confirmed invalid of some chronic disease, resigned himself to certain death. Extraordinary to relate, the disease from that time left him, and he lived to be a sound and healthy man."

The election of Mr. Lockwood to the office of attorney-general would seem now to be a very insignificant matter, but it was not so, in fact, and was not so regarded at the time. There were then no organized political parties, but the great question of slavery was the controlling influence in every election. A large majority of the voters was from the Southern States, or like the old French settlers, in full sympathy with them, and every state officer, up to this election of Mr. Lockwood, was, either from principle or policy, pro-slavery by open avowal or example.

This will be more fully considered in a chapter on the slavery conflict in Illinois.

One incident in Mr. Lockwood's life as attorney-general, is worthy of special notice and remembrance. Gov. Ford thus refers to it in his History of Illinois: "In 1820 was fought the first and last duel of Illinois. One of the parties fell mortally wounded; the other was tried and convicted of murder, and suffered the extreme penalty of the law by hanging. Mr. Lockwood was then the attorney of the state, and prosecuted in the case. To his talents and success as a prosecutor, the people are indebted for this early precedent and example, which did more than is generally known to prevent the barbarous practice of dueling from being introduced into the state."

In the election of 1822, Edward Coles, a very strong anti-slavery man, was, very unexpectedly to all, elected governor of the state. This was brought about by a strange division of the opposition, which related simply to the governor, so that all the other state officers elected were in sympathy with slavery, and Gov. Coles knew there would be controversy between him and other state officers all through his administration. He could, however, under the Constitution, as it then was, appoint the Secretary of State, and he selected Mr. Lockwood, knowing him to be well fitted for the place, and one upon whom he could rely in the great conflict, which every one felt was soon coming on. Mr. Lockwood held this office but a short time, for reasons thus given by himself: "Before removing to Vandalia, where my duties of Secretary of State would require me to reside, I very unexpectedly received, from President Monroe, a commission, appointing me Receiver of public moneys, at the land office of Edwardsville. The salary of Secretary was payable in depreciated paper money, the salary of Receiver was payable in specie, and a per cent. on receipts. Specie, instead of depreciated paper, decided the question, and I accepted the office of Receiver at Edwardsville."

The full force of this reason will appear, when we remember that the salary was small in itself, and the depreciated currency was worth only thirty cents on the dollar. But one great reason for accepting the office, Mr. Lockwood does not give. He felt

that the question—should Illinois be a slave or free state? was soon to be decided.

As things then stood, the probability was largely on the side of slavery. All the sympathies of his soul were on the side of freedom. The position of Receiver in the land office offered him both time and money to be used in the great cause, and he consecrated both to the work.

The way in which Mr. Lockwood received his commission is interesting. His predecessor had proved a defaulter, and President Monroe sent for Judge Pope, who was then in Washington, and he gives this account of the interview:

President Monroe seemed much excited over the defalcation in Illinois, and asked me if the state could furnish an honest man, who could be relied upon not to disgrace his administration. I replied, I did know such a man for whom I could vouch most confidently, but unfortunately he did not belong to our party. To this the President replied, "Devil take the party! I want an honest man." Saving the slight profanity, a good motto for civil service reform

As the result of this conversation, a commission came to Mr. Lockwood.

The following letter received by Mr. Lockwood at this time from Daniel P. Cook, our only representative in Congress, shows the friendship existing between the two men, and gives some items of general interest:

WASHINGTON, D. C., January 31, 1823.

DEAR LOCKWOOD:

I see you are Secretary of State. You are also appointed Receiver of Public Moneys at Edwardsville. Mr. Pope's recommendation of you was so strong and pressing, that when objections were made, the President said he could not think of any appointment that would be so acceptable to him as yours. I need not tell what my own feelings were. I think you will know this without an expression, but I wish you to place the appointment upon Mr. Pope's recommendation. Should you decline the office, do not do so until I can be apprised of it.

There is great working and intriguing here on the subject of

president making. Adams is evidently the foremost horse at present, and I think is gaining. Your friend,

D. P. Cook.

Some idea of the esteem in which Mr. Lockwood was held at the time is presented in the following article, recently furnished by the author to the local press:

The Erie canal was begun in 1817 and finished in 1825, and the great interest felt in that important work was not confined to New York. As the work progressed the Eastern and Western States seemed to realize that they were brought closer together, and to appreciate the great value of this new water communication to both sections. During this period a large number of enterprising and influential men emigrated from New York to Illinois, and brought with them a good deal of canal enthusiasm, which very soon developed a plan for connecting the northern lakes and western rivers by a canal from Lake Michigan to the Illinois river. In 1821 the legislature of Illinois appointed canal commissioners, and made an appropriation of $10,000 for surveys and other preliminary work. It was not presumed that these commissioners knew anything about the work entrusted to them, or that there would be any immediate use for the money appropriated, and nothing more than preliminary work was undertaken until 1836. The following documents and correspondence relating to this matter will interest your readers:

Board of Canal Commissioners,
Edwardsville, June 10, 1823.

At a meeting of the board of canal commissioners it was this day *ordered* that Samuel D. Lockwood, Esq., be authorized, as the agent of this board, to enter into a contract with an engineer to explore and survey the route of the canal to connect the waters of Lake Michigan with the Illinois river, to make estimates of the probable expense, with plans and maps thereof, and that this board will ratify whatever engagements he may enter into in pursuance of this authority.

I certify that the above is a true extract from the minutes.

W. H. Hopkins, *Secretary.*

In connection with the above authority, is the following letter of instruction:

BOARD OF CANAL COMMISSIONERS,
EDWARDSVILLE, June 10, 1823.

DEAR SIR:

The Board of Commissioners have appointed you their agent for the purpose of procuring an engineer of character and skill, and entering into a contract with him, to survey and locate the line of the proposed canal to connect the waters of Lake Michigan with the Illinois river. You are herewith furnished with a letter on the subject to the Board of Commissioners of the New York canal, who will doubtless afford you every possible information to enable you to make a judicious selection. You will, also, call on Messrs. Geddy & Wright, to whom the board have written some time since, under the expectation that an arrangement might have been made with one of them. They have declined, but offer their friendly aid in prosecuting, generally, the object in contemplation. You will be guided in your selection by the joint information of these gentlemen, recollecting how important it is that the selection should be of a character to ensure the utmost confidence in the talents and practical skill of the person chosen. The great interests of the state involved in the measure, the absolute necessity for the utmost accuracy in the proposed survey, and the consequences which would result to the state and the character of those immediately concerned, should it not be prosecuted with the most peculiar care and circumspection, have doubtless presented themselves to your consideration, and will, we are persuaded, have their influence on your judgment in the choice you shall make, in connection with your own feelings on the subject. It is desirable that the engineer engaged should arrive at Edwardsville, in this state, (the point from which it is proposed to set out) as early as the 15th of September next, if possible, or certainly by the 25th of the month, as it is the desire and intention of the commission to commence and complete the survey this fall if possible. You will impress on the mind of the gentleman employed the necessity of promptness, and that this season of the year presents the only favorable time for the prosecution of the work. You are authorized to offer for this service to the engineer a sum not exceeding $10 per day, while actually engaged in the prosecution

of the work, and $200 for his expenses in coming here and returning to the place of his residence; but you will be aware at the same time how important it is that one should be had for a less sum, provided his talents are equal to others. It is not, however, the wish of the board by this suggestion, to hazard in the least the object by pressing this consideration, and rather than be defeated, you may add $100 more, and it will be understood that during the prosecution of the work the subsistence and necessary assistance will be furnished to him free of charge. Believing that your own good sense will, under the advice of the gentlemen with whom you will confer, enable you to make a proper selection, they entrust you with the utmost confidence in the management thereof.

For your services you will receive a reasonable compensation. You will apprise the board by the earliest opportunity of your prospects in this business, and in the event of concluding an arrangement, forward duplicate letters of advice by mail, and private conveyance, if practicable, one directed to the president of the board at Shawneetown, one to Capt. Alexander, Golconda, Pope county, and one to the other commissioners at Edwardsville. Very respectfully your obedient servants,

THOS. THROOP, *President.*
ERASTUS BROWN.
EMANUEL J. WEST.
T. W. SMITH.

SAMUEL D. LOCKWOOD, Esq., Edwardsville, Ill.

In pursuance of the above instructions, Mr. Lockwood forwarded a letter to the canal commissioners of the State of New York, and the following is the reply from the Hon. De Witt Clinton, the famous projector of the Erie canal, then in process of construction, and soon after completed:

ALBANY, N. Y., July 28, 1823.

GENTLEMEN:

I had the honor to receive by Samuel D. Lockwood, Esq., a letter from you addressed to the canal commissioners of this state, requesting our aid to secure the services of an approved engineer to survey and designate the route of a canal to connect Lake Michigan and the Illinois river. Feeling a deep solicitude

for the success of this important undertaking, it would give me great pleasure to comply with your request were it in my power, but at present and for the remainder of the season none of our experienced and distinguished engineers can be spared. I feel, however, persuaded that I will be able to recommend one for the ensuing year, who will answer your views in all respects. It will always afford me high satisfaction to promote the noble communication contemplated to be created by your state, and I trust that you will not hesitate to call on me without reserve for any advice or assistance that you may conceive useful. I am, very respectfully, Your most obedient servant,

DE WITT CLINTON.

The Honorable, THE CANAL COMMISSIONERS OF ILLINOIS.

So for the time being no surveys were made. During the next succeeding years several attempts were made to float the bonds of the proposed canal, and from time to time, the state made grants of lands and money to further the project. But the year 1836 was reached before actual work was even commenced, and before the canal was finished the railroad system that has since assumed such wonderful proportions, had begun to develop, and the great canal, so philanthropic a public work in the minds of its projectors, ranks to-day as a freight route comparatively unimportant.

During the years 1823 and '24 occurred the great controversy over the question: Shall a Convention be called to form a new State Constitution? It was well understood that such a convention would frame a constitution making Illinois a slave state. This was the most important battle ever fought in our state. Mr. Lockwood entered into it with his whole soul, and throughout the contest was recognized as a most active and efficient leader. A full account of the slavery conflict will be found in another chapter.

CHAPTER VI.

THE JUDICIARY.

THE vote on the convention question in 1824 was conclusive. The victory for the anti-slavery party was decisive. Beyond all further controversy, Illinois took her place as one of the free states. The decision of this question left those who had been earnestly engaged in it, free to give their attention to other reforms greatly needed, the most important of which related to our judiciary system. Reform here was imperative, both as to men and measures. The constitution of the state provided that the justices should be appointed by the legislature and hold office during life, with this wise proviso, that the justices first appointed should hold office only five years. The wisdom of this proviso is apparent from the condition of the state at the time it formed its constitution. There were no lawyers in the state willing to accept the position of judge in the supreme court, who were known to be qualified for that important trust. In the convention that formed the constitution there were but three lawyers, Jesse B. Thomas, E. K. Kane and A. F. Hubbard, and all these had political aspirations in other directions.

Mr. Thomas was United States judge for the territory of Illinois, and now aspired to the position of United States senator from the new state, in which he was successful. Ninian Edwards, governor of the territory from its organization, and well qualified to fill any position the state might assign him, had the same aspiration as Judge Thomas, and was also successful.

Nathaniel Pope, who has already been mentioned several times, was sure of the appointment of United States district judge, and was not available for any state office. Outside of these three men, at this time, there were no lawyers of established reputation within the state.

The wisdom of the constitutional proviso is still more apparent, when we consider the men appointed by the legislature as justices of our supreme court. Of these, there were to be one chief justice and three associate justices, and the following were appointed to office: John Philips, chief justice; Wm. P. Foster, Thos. C. Brown and John Reynolds, associate justices.

Of Judge Philips' qualifications for the office little is now known. He was a man of decided ability in some other directions. He came to the state in the war of 1812, as captain in the regular army, and afterward was appointed secretary of the territory. Thus he was a prominent man in the state at the time of his appointment as chief justice, but he had aspirations in another direction, and in July, 1822, he resigned, having secured the nomination of the pro-slavery party as its candidate for governor. Defeated in the election, disgusted with his party friends, whose bad management brought about that result, he turned his back upon the state and removed to Tennessee.

As to Judge Brown, we quote from "Stuvé and Davidson": "Brown was a large, somewhat stately looking, affable man, yielding in disposition, with little industry for study, and few of the higher qualities for a judge. He remained on the bench till the constitution of 1848 went into effect, a period exceeding thirty years;" and here it may be added that subsequent history does not change this record.

Wm. P. Foster—we can not call him judge—was a miserable fraud, and his appointment is a mystery. He must have had some of the winning manners of the professional scoundrel. He had never studied law, nor had a license to practice. By one excuse after another he avoided holding court, until he had drawn his first year's salary, when he resigned and left the state. He afterwards proved to be one of the vilest scoundrels known in our history.

The appointment of John Reynolds seemed like a farce. He had studied law but a few months, and had had no practice, and was not thought of for the position until a few hours before the appointment, which was as much a surprise to himself as to others. Judge Reynolds has written a book entitled, "My Own Life and Times," of some value, as it speaks of men and things

as they came within his own observation, but of little merit in other respects. This book shows clearly that he had no legal qualifications for the judgeship, nor personal dignity to adorn the bench, or even save it from contempt.

This closes the list of our first judges. A little improvement was made by the appointment of Thomas Reynolds as chief justice in place of Judge Philips, and a very great improvement in the appointment of Wm. Wilson in the place of Foster. As Judge Wilson was the life-long friend and associate of Mr. Lockwood, we insert here the following quotation from "Stuvé and Davidson": "Wilson was a young man, scarcely twenty-five years old, of spotless character, good education, (though not collegiate) and fair attainments as a lawyer. He was social in his disposition, candid and artless by nature, with a manner pleasing and winning. He proved a sound judge, and presided with a dignity which inspired the utmost respect in the bar and attendants."

To the general assembly of 1824 was delegated the important work of reorganizing the judiciary and the selection of new justices, and Mr. Lockwood was earnestly solicited to become a candidate for one of the positions. He was himself constitutionally averse to any such action and would not consent to any such use of his name. His friends were, however, persistent, and the office was forced upon him.

The vote on the convention question, though decisive, did not bring peace. The bitter spirit engendered by the contest lasted for more than one generation, and was manifest in many state elections. At the same time this vote was taken, all the state officers were to be elected, and each party had its candidates in the field, and as the parties were about equally divided, the appointment of the justices caused a bitter controversy.

We quote here from some letters written at the time, indicating some of the features of this controversy, and some of the reasons which were urged upon Mr. Lockwood, by his friends, to induce him to accept the position to which he was appointed:

VANDALIA, Dec. 31, 1824.

SAMUEL D. LOCKWOOD, Esq.:

DEAR SIR,—The judiciary bill has passed both houses, and become a law, and the election for judges, pursuant to the pro-

visions of that law, came on yesterday. Wm. Wilson was elected supreme judge, and yourself, T. W. Smith, T. C. Brown were elected associate judges.

The blacklegs with a few traitors outnumbered us, but upon the whole, we think ourselves happy that we were able to keep out the Reynolds, (Thomas and John) and James Turney. I have not time to detail particulars, but suffice it to say that the struggle was equal, if not superior, to anything of the kind that ever took place in this government. The friends of each of the candidates, that is of each party, were ardent in the extreme. Our eyes are now turned to you and Wilson for a reform in the practice. We think you will have the aid of Brown. We pray you will accept for our sakes; do not refuse. The salaries are not fixed, but I hope they will not be less than $1,000.

Your Ob't Serv't, WM. OTWELL.

VANDALIA, Dec. 30, 1824.

S. D. LOCKWOOD, Esq.:

MY DEAR SIR,—We, yesterday, had an election, as you will see by the papers. We have elected you, and no doubt, placed you in a worse position for accumulating property than at present, but I hope you will serve. I did not know that you could be induced to do so, until the evening before the election, and I was then determined to run you for chief justice, but others who appeared to be your friends were of the opinion we would be more certain to elect you as an associate. I still think they did wrong. I would have been better pleased to have seen you chief justice. I am satisfied your friends in our section of the state, and they are many, are glad to have you one of the judges of the supreme court.

I am not pleased with the election of Brown; I conceive he has no business there.

We will not be able to give high salaries now, but I hope the state will be, by next session, in a situation to increase.

With considerations of respect I am, dear sir,

Your friend and well-wisher, W. B. ARCHER.

BELLEVILLE, Jan. 4, 1825.

SAMUEL D. LOCKWOOD, Esq.

DEAR SIR,—I am truly gratified to find that you have been elected a judge of our court of appeals, but I am also very

fearful that you will not accept. It is true, you have not that station on the bench to which your reputation as a lawyer entitles you. But it is in the hands of a friend, who is highly respected, both for his integrity and good judgment, and I presume you will not decline accepting on that account. As to the salary, if it should be fixed at $1,000, I think you ought not to hesitate.

Money has appreciated greatly and will ultimately settle down at the value it had before the French revolution. Our state paper must rise rapidly and will soon disappear altogether, as Missouri money has done.

This is a time when those who can do so, ought to feel disposed to make some sacrifice for the public good. If your acceptance would not be too great a one, you will be entitled to the gratitude of the state for making it. Your friend truly,

NINIAN EDWARDS.

DR. LOCKWOOD: KASKASKIA, Jan'y 5, 1825.

I have just received a letter from McKee, who thinks it doubtful if you accept your new appointment. This won't do—your friends will never forgive you. If the salary is now put too low, there is no doubt of its being raised at the next session.

We desire you to live here, and Mrs. Pope has consented most cheerfully to provide you with a knife and fork at her table—this is intended as a bribe to bring you here. In this place you have many friends, among whom you may pass your time very pleasantly—much more so than you can do at Edwardsville.

Your af't friend, NATH'L POPE.

The salary was fixed at $1,000, payable, however, in depreciated currency, which reduced it to about $400. Thus, Mr. Lockwood had to decide between the comparatively lucrative office of receiver, with light work and small responsibility, and the position of judge, with meagre salary, arduous labors, and immense responsibility. The latter, however, offered an opportunity of doing a great and good work for his adopted state in the line of his chosen profession, and this consideration decided the matter. He accepted the office and entered upon that work, the value of which to the state can be appreciated only by those who understand the nature of it, and the ability and fidelity with which it was accomplished.

CHAPTER VII.

ILLINOIS CRIMINAL CODE.

THE legislature of Illinois, at its session of 1824–25, instructed the justices of the supreme court to prepare a *Revision* of the statutes of the state, to be presented at the next session. Such a work was imperatively demanded. Both Governors Bond and Coles had in their messages urged this matter at several sessions of the legislature, but for some reason, the work had been neglected, and the crude attempts to amend existing statutes had made the matter worse. This was especially the case with reference to the criminal code.

The first legislature of the Northwest Territory had adopted a code of laws, incomplete and poorly arranged to start with, and not much improved by subsequent legislatures. The Indiana Territory adopted this code as it stood in 1800, and with various additions and amendments bequeathed it to the Territory of Illinois in 1809. The legislature of this territory made several attempts at revision without any substantial improvement, and when the state, at its organization, adopted this patched-up code, it was, as Governor Ford expresses it, so crude and contradictory that no one could tell what it did mean, or did not mean. The penalties under the criminal code were retained with all their cruelty and barbarity. There was no state prison, and the county jails were log pens, more fit for wild beasts than human beings, and so from necessity the penalties for violation of the law were such as could be inflicted without delay, such as whipping, branding, the pillory, fines and death. In some cases, where the fine could not be collected, the culprit might be sold till he had worked out his fine. Death was the penalty for murder, rape and second offense of horse stealing. Whipping was the most common penalty, and in the number of lashes inflicted there was much more regard to popular feeling than to

justice. For burglary, or robbery, the penalty was thirty-nine stripes on the bare back; horse stealing, from fifty to one hundred lashes for first offense; hog stealing, from twenty-five to thirty-nine lashes; for defacing marks or brands on animals at large, forty lashes *well laid on*, and for second offense the culprit was to have letter T branded in the left hand with a red-hot iron; and for bigamy from one hundred to three hundred stripes.

The judges realized the importance and necessity of a revision of the laws, and at once entered upon the work, assigning most of it to Justices Lockwood and Smith. Judge Smith was absent from the state for several months, which threw an undue share of the work upon Judge Lockwood. The revision of the criminal code was entirely his work. It can hardly be called a *revision*, as the old statutes of the state were largely ignored, and the work to a considerable extent was necessarily original as to forms of expression, arrangement, and relation of penalties to crimes.

The following quotations indicate something of the difficulties of this work, and its value to the state. Mr. Eugene L. Gross, in the preface to his "Digest of the Criminal Laws of Illinois," published in 1868, says: "Previous to 1827 the statutes were few and imperfect. They had little of the harmony, and none of the regularity, of a rounded and completed system. They were passed at different times and for different purposes, and were framed to suit the needs of pioneer life. But at the session of that year, the legislature revised the entire body of the statutes; the criminal code was prepared with especial care, and was expressed in language at once full, clear and exact. It was the work of Judge Lockwood, and considering all the circumstances in which he was then placed, there being no libraries in the state, and no law books to which he had access, except a volume of the laws of New York passed in 1802, and a volume of the laws of Georgia, this work of Judge Lockwood is an enduring witness to his clear intellect, and to his thorough culture as a lawyer. It is not an attempt to create a substitute for the common law, but is rather an embodiment of it, with merely such modifications as were required to suit it to the wants of this people, and adapt it to society here in its new and varying forms. As such it has long been a theme of admiration in the state and elsewhere."

The following statement made by Justice Craig at the laying of the corner-stone of the court house of Knox county on June 24, 1885, indicates how well this work of Judge Lockwood has stood the test of time: "Our criminal code, with but few amendments, has been in existence since the revision of our laws in 1825. It was drafted, as I have been informed, by Judge Lockwood, one of the ablest judges our state ever produced. We had a constitutional convention in 1847, and again in 1870, to form an organic law for the state. Each of those bodies prepared a constitution which was adopted by the people. Again, since 1870, the legislature has revised our statutes, but while the statute on various subjects was changed, the criminal code was found to need but few amendments, and hence was left substantially as originally prepared in 1825."

The article in this code, with reference to "Accessories to Crime," is here worthy of notice, as under it the Chicago anarchists have recently been tried and convicted of murder. It reads as follows: "An accessory, is he, or she, who stands by and aids, abets or assists; or *who, not being present aiding, abetting or assisting,* HATH ADVISED AND ENCOURAGED *the perpetration of the crime.* He, or she, who thus aids, abets or assists, advises or encourages, shall be deemed and considered as principal, and punished accordingly."

CHAPTER VIII.

DECISIONS OF THE SUPREME COURT.

THE very important place held by Judge Lockwood on the supreme bench, and the large amount of work accomplished by him, can be appreciated only by those who are familiar with the decisions of that court. A brief review of the first volume of Illinois Reports is here given, as indicating something of his work. This is a small octavo volume of 306 pages, covering the period from 1819 to 1830, Judge Sidney Breese, reporter. For the first five years of this period the decisions of the court are of no value. Six terms of the court were held, but no matter of any importance came up for consideration. Forty-five cases came before the court by appeal, and the opinions of the court in all these cases cover only fifty-two pages of the Reports.

We have seen how the court was constituted during that period, and the decisions have probably never been quoted as authoritative. The Reports from 1825 to 1830 show a very different order of things. The court realized the responsibility resting upon it. Holding its sessions amid very rude frontier surroundings, it established and maintained stringent rules of practice, and preserved a decorum and dignity creditable alike to the court and state. Its decisions covered important questions of law and practice not reversed by subsequent courts. How large a part of this work devolved upon Judge Lockwood, the following figures indicate: In the two terms of the court held in 1825, twenty-three cases were decided, and in thirteen of them Judge Lockwood rendered the opinion. In 1826 twenty-seven cases were considered, and the opinion of the court in thirteen of them was rendered by Judge Lockwood. In two succeeding terms, in eighteen cases out of twenty-nine, the opinion of the court was written out by Judge Lockwood, and

to this it may be added that in almost every important case the labor of writing out the opinion of the court was assigned to him. The following extracts from some of these opinions are interesting historically, and show something of Judge Lockwood's style of thought and expression.

The first case of any importance, that came up for adjudication, had in it a political bearing, and was the occasion of much party feeling, and may be regarded as the commencement of a conflict between the legislature and the supreme court, which lasted till the Constitution of 1848 radically changed our whole judiciary system. It is very difficult to find names to designate the political parties at this time. The old issues incidental to the organization of the National government had largely died out, and the old party names, Federal, Republican and Democratic, had, as to their original use, become obsolete. But the old parties had not died out, and were now reorganizing on new measures, and around new men, and were soon to accept the new names, Democrat and Whig; and by anticipation we may, for convenience, use these names here. In the gubernatorial election of 1822, the Democratic party nominated Chief Justice Joseph Philips for governor, and Adolphus F. Hubbard, lieutenant-governor. As this party had a large majority in the state, and was confident of success, it seemed hardly worth while for the other party to make any opposition. But better counsel prevailed, and the minority party brought out its best man, Edward Coles, for governor, determined to make the best fight possible. The result of the election was an entire surprise to both parties.

The friends of Mr. Philips were very wrathful over their defeat and claimed they were cheated. Judge Philips himself left the state in disgust, not to return. This wholly unlooked-for election of Governor Coles was a great blessing for the state, but placed him in a very uncomfortable position. Both branches of the legislature were opposed to him by a large majority. Attempts were made to worry him into a resignation. Mobs were stirred up against him with threats of personal violence. Malicious prosecutions were commenced against him in the lower courts, and heavy fines imposed, and finally a bold attempt was made to oust him from the office of governor under the provision

of the constitution relating to the lieutenant governor, namely: "In case of impeachment of the governor, his removal from office, death, refusal to qualify, resignation, or absence from the state, the lieutenant governor shall exercise all the power and authority appertaining to the office of governor, until the time pointed out by the constitution for the election of a governor shall arrive; unless the general assembly shall otherwise provide by law for the election of a governor to fill such vacancy." Under this provision and during a temporary absence of Governor Coles from the state, Governor Hubbard assumed that he was, *de jure* and *de facto*, governor for the remainder of Governor Coles's term. He issued a call for an extra session of the general assembly, and after Governor Coles's return he claimed to hold the office, and issued a commission to W. L. D. Ewing as paymaster general of the state militia, which was presented to the secretary of state, George Forquer, for his signature, who refused to sign and affix the official seal thereto. Ewing applied to the supreme court for a rule on the secretary to show cause why a mandamus should not be awarded requiring him, Forquer, to countersign and affix the seal of the state to his, Ewing's, commission, issued and signed by Adolphus F. Hubbard, governor of Illinois. The rule being granted, the secretary answered, stating the facts, whereby this important constitutional question was sprung upon the supreme court under circumstances which gave little time for deliberation or consultation of authorities. We quote the following from Breese's Report, giving it in full, as indicating something of Judge Lockwood's clearness of statement and force of expression, calling attention especially to these words which may be said to characterize all his decisions, "common justice, common law and common sense."

THE PEOPLE ON THE RELATION OF WM. L. D. EWING, AGAINST GEORGE FORQUER, SECRETARY OF STATE.

On a motion for a Mandamus. Opinion of the Court, by Justice Lockwood.

A rule was granted by this court requiring the secretary of state to show cause why a *mandamus* should not be awarded against him, requiring him to countersign and seal a commission appointing Wm. L. D. Ewing, paymaster general of this state.

This rule was granted on an affidavit made by Adolphus F. Hubbard, which affidavit states in substance, that said Hubbard received a letter from Edward Coles, then being governor of this state, that he intended being absent from the state, for a period of time, and that in consequence of such absence, the duties of governor would devolve on the said Hubbard, he being the lieutenant governor of the state. The affidavit further states, that Coles absented himself from the state, and that he, the lieutenant governor, entered upon the duties of the office of governor. The affidavit further says, that on the second day of November, 1825, he, the said Hubbard, did appoint the said Ewing paymaster general, said office being then vacant, by filling up, and subscribing his name to a commission for that purpose. That on the said 2d November, said Hubbard, still being the acting governor, did in the office of secretary of state, present to the said Forquer, he being secretary of state, said commission, and requested him to countersign and affix the seal of the state to the same, which the said secretary of state failed and refused to do. The letter referred to in the affidavit, and a commission appointing said Ewing paymaster general until the end of the next session of the general assembly, were annexed to the affidavit.

To the rule granted, as above mentioned, the secretary showed for a cause why a *mandamus* ought not to be awarded against him, the following reasons, to wit: because Edward Coles was, on the day of presenting said commission, and had been from the 31st October, 1825, and has ever since remained in the administration of the office of the governor of the state of Illinois. He states as a further reason why the *mandamus* should not be awarded, "that it does not appear from the records of his office, that said office of paymaster had ever been filled by any previous appointment." The secretary then admits that the lieutenant governor entered on the discharge of the duties of the office of governor, and continued in the discharge thereof, until the 31st of October, 1825, on which day he alleges, "that said Edward Coles re-entered upon the discharge of the duties of said office of governor, and has remained therein ever since." Upon the affidavit, and accompanying documents, and the reasons, in writing as

above given by the secretary of state, it has been contended by the counsel for the relator, that a *mandamus* ought to be granted. The facts stated by the secretary were not disputed, but conceded to be true.

The questions supposed to grow out of this application have been elaborately argued, and the discussion has occupied several days, yet, it is expected, that this court will, in less time than was employed in the argument of the case, make up and deliver an opinion, which in its consequences may determine the question, whether Edward Coles or A. F. Hubbard is, according to the constitution, governor of this state. A question of such immense importance, whether we regard the interest and dignity of the persons interested in the result, or the right of the people to have the government administered by the person to whom they have delegated so important a trust, would seem to require that the court ought to have more time for deliberation and examination than the remainder of the present term. As, however, a decision has been anxiously pressed upon the court, they have determined to give to the subject all the investigation, which the shortness of the time, and the almost total absence of law books, and other sources of information will permit. If the court, laboring under such disadvantages, together with the unprecedented nature and novelty of the case, should err in the conclusion to which they shall arrive, they have no doubt, that the error will meet, in the bosoms of the intelligent and honest, with a ready and satisfactory apology. In the great case of Marbury and Madison, secretary of state for the United States, in the supreme court of the United States, (a tribunal filled with as enlightened and as able jurists as ever graced the judgment seat in this or any other nation,) the questions which, in some respects are similar to those in this case, were pending before that court for two years. Yet, the opinion delivered in that case, although conspicuous for its luminous display of deep research, and constitutional learning, has not given universal satisfaction. Can it then be reasonably expected, that this court, without any pretension to the great and distinguished talents of the judges of that court, and destitute of even the ordinary

means of forming an opinion, will be able to arrive at a determination, that will be universally satisfactory? But to come to the case before the court. It was contended on the argument, that Governor Coles, by absenting himself from this state, had abdicated and forfeited the office of governor, and could not, on his return into the state, resume its functions. But before the court can enter into this question, it will be necessary for them to inquire, 1. Whether the relator has a right to have the commission countersigned and sealed? And 2. If he has such right, do the laws of this state, afford him the remedy he asks? It appears from the answer filed by the secretary of state, that the office of paymaster general had never been filled. This office was created by the 4th section of the act passed 8th of February, 1821, amending the militia act. A question of much importance here arises, whether the incumbent in the office of governor, can make an appointment in the recess of the general assembly, when the vacancy did not occur since the adjournment of that body? The answer to this question is only to be found in the true construction of the 8th section of the 4th article of our constitution, which reads as follows: "When any officer, the right of whose appointment is, by this constitution, vested in the general assembly, or in the governor and senate, shall, during the recess, die, or his office by any means become vacant, the governor shall have power to fill that vacancy, by granting a commission which shall expire at the end of the next general assembly." If any doubt existed as to the meaning of this section, reference might be had to the practice of the government. Had such practice been acquiesced in? Only one case, however, is within the knowledge of the court, and in that case, the governor determined that he had not the power to make the appointment, although it was a case that loudly called for its exercise, if the power existed. This solitary precedent, however, can not be considered as settling the question. The words, however, of this section appear so clear, and so devoid of ambiguity, that it seems a useless waste of time to look further than to the clause itself, for its true meaning. It only authorizes the governor to fill the vacancy when it shall occur during the recess of the general assembly, whether that

vacancy be occasioned by death, or any other means. The vacancy must happen during the recess. Can it then for a moment be pretended, that the contingency had happened, which authorized the appointment of the relator? It appears to me, that it would require a total perversion of the language used, to contend that it had. But as this question is one of vital importance to the correct and wholesome administration of this government, I have examined the constitution of the United States, and the construction that has prevailed on this subject. By the 2d section of the 2d article, "The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions, which shall expire at the end of their next session." In an able work recently published on constitutional law, I find the construction which has been given to this clause of the constitution of the United States, which so strikingly resemble our own, that I trust I shall be excused for making a long extract from the work. In pages 373–4 of Sargeant's Constitutional Law, the subject is noticed as follows:

"In the year 1814 President Madison granted commissions to ministers to negotiate the treaty of Ghent in the recess of the senate. The principle acted on in this case, however, was not acquiesced in, but protested against by the senate at their succeeding session, and on a subsequent occasion, April 20, 1822, during the pendency of the bill for an appropriation to defray the expenses of missions to the South American States, it seemed to be distinctly understood to be the sense of the senate, that it is only in offices that become vacant during the recess, that the President is authorized to exercise the right of appointing to office, and that in original vacancies, where there has not been an incumbent of the office, such a power, under the constitution, does not attach to the executive. An amendment that had been proposed, providing that the President should not appoint any minister to the South American states, but with the advice and consent of the senate was, therefore, withdrawn as unnecessary. And in a report of a committee of the senate made on the 25th of April, 1822, it is declared that the words, 'all vacancies that may happen during the recess of the senate,' means vacancies occurring from death, resignation, promotion or removal. The

word 'happen,' has reference to some casualty not provided for by law. If the senate be in session, when offices are created by law, which were not before filled, and nominations be not then made to them by the President, the President can not appoint after the adjournment of the senate, because in such case the vacancy does not happen during the recess. In many instances where offices are created by law, special power is given to the President to fill them in the recess of the senate, and in no instance has the President filled such vacancies without special authority by law."

Here, then, we find a practical exposition of the Constitution of the United States adhered to for a series of years, and the concluding fact stated in the extract, speaks much on this subject. There can be but little doubt, that since the organization of the general government, many cases must have arisen where the public interests would have been promoted by the exercise of this power; yet, the President has carefully abstained from stretching his authority, even for useful purposes, to cases not authorized by the constitution. In the appointment of the relator, it can not even be pretended that any state necessity existed for filling the vacancy. The office had been vacant since 1821; and yet, I am not aware that any complaint has ever been made. I, therefore, come to the conclusion that the lieutenant-governor, admitting him fully clothed with all the functions of governor, had not the constitutional power to fill the vacancy in the office of paymaster-general. This conclusion would seem to settle the question whether the *mandamus* ought to be awarded or not. But the counsel for the relator contended on the argument that whether the lieutenant-governor had the constitutional right or not, to make the appointment, still the secretary was compelled to countersign the commission and affix the seal. Can this proposition be sustained? By the 4th section of the Act defining the duties of the secretary of state, it is enacted, "That all commissions required by law to be issued by the governor, shall be countersigned by the secretary of state." In this section is to be found the duties of the secretary. Had the legislature intended to require the secretary to countersign every commission the governor should present to him, whether

authorized by the law or the constitution, its phraseology would have been that the secretary should countersign *every* commission presented to him by the governor. The secretary is, however, *only* required to countersign those commissions "required to be issued by law." Must he not, then, look into the law to see if the commission is required by law? Would he be required to sign a commission for an office that does not exist?

The secretary of state is a constitutional officer, as well as the governor, and his duties are pointed out by law. I think he may refuse to sanction an unconstitutional or illegal act. Should I, however, be wrong in this opinion, still the court might well doubt the propriety of granting a *mandamus*. If the lieutenant-governor had not the power to make the appointment, what benefit would the relator derive from possessing the commission, although duly signed and sealed? Would it confer the office on him? I think not. But if any doubt rests on this subject, the court ought not to grant the *mandamus*. I refer to the following authorities on the subject: "The court will not grant a *mandamus* to a person to do any act, whatever, where *it is doubtful whether he has by law a right to do such act or not*, for such would be to render the process of the court nugatory, as if the person had no rights, he might so return it." Esp. N. P. page 665. "The court will not grant a *mandamus* to a person commanding him to do anything which he is not under a *legal* necessity of doing; that is, if the law has left a discretion in him, the court will not control it." *Ibid*, 668.

But another, and still more important question arises, from the reasons shown by the secretary, why the *mandamus* should not be granted. He informs the court, that on the day of presenting the commission, and before and ever since, Edward Coles is, and has been, in the administration of the office of governor of this state, and contends that he has no right to recognize any other person as governor. On the other hand, the counsel for the relator contended that Edward Coles having absented himself from the state, had no right to resume the functions of the office, and that he was to be regarded as an usurper.

Here, then, is distinctly presented to the court the question whether Edward Coles, or A. F. Hubbard, has the right to administer the government.

It was conceded on the argument, and such no doubt would be the effect, if the *mandamus* should be granted, that Coles would be completely stripped of the executive functions. For if a *mandamus* can be awarded in this case, it could to every officer of the government who should refuse to recognize Hubbard as governor; and Coles, without being before the court, or entitled to be heard on the subject, would be deposed from the highest station in the government—a station, too, conferred on him by the suffrages of the people. Does not the mere statement of the consequences, that will flow from such a decision, imperiously call on the mind to reflect, to ponder well the subject, before so great and decisive a measure is resorted to? Nay, does not the bare statement of the consequences, that will result to a person not before the court, admonish them that they have no power to award the *mandamus?* It was urged by the counsel for the relator, that the secretary had boldly marched up to the real question, to wit: Who is the governor by the constitution? and it was intimated, that it was also the duty of the court to decide this question. It is a sufficient answer to this intimation, that the secretary can not, by his own act, bring into discussion the rights of others, unless they necessarily arise in the case. His consent can not give this court any right to decide questions improperly before them. When such a question comes directly and properly before them, it is to be presumed they will not shrink from the performance of their duty, let the consequences be what they may. But does this question, Who is the constitutional governor? necessarily arise. It is a principle of common justice, common law, and common sense, that no person shall be condemned without being heard. That no person can be deprived, by courts of justice, of even a dollar's worth of property, without first having been summoned to shew cause against it. It must be kept in mind, that when this court is called upon to decide who is governor, that the question is no longer between the relator and secretary of state, but between Hubbard and Coles, neither of whom are strictly parties to this controversy; consequently neither of them ought to be affected by the decision in this case. In this point of view, the remedy sought in this case, is entirely misconceived. Hubbard should have filed an

information in nature of a *quo warranto* against Coles, then the question would come up directly, and not collaterally, before the court, and the controversy might be tried by a jury, should there be an issue of fact. Whether an information in nature of a *quo warranto,* would lie, to try such a question, the court are not now called upon to decide. One of the counsel for the relator very emphatically calls this a *political* question. If the counsel was right, the legislature would seem to be the proper forum for its discussion. But when the question arises in this court, it will be time enough to decide it. "Sufficient unto the day is the evil thereof." I am, however, of the opinion, if Hubbard has any *legal remedy* to try his right to fill the executive chair, that it is *only* by an information in the nature of a *quo warranto.* On this subject the court are, fortunately, not entirely without the aid of authority. In the case of *The People* v. *the Mayor, Aldermen, &c., of the City of New York,* 3 Johns, Cas. 79, the court says: "Where the office is already filled by a person who has been admitted and sworn, and is in *color* of right, a *mandamus* is never issued to admit another person, because the corporation, being a third party, may admit or not, at pleasure, *and the right of the party in office may be injured without his having an opportunity to make a defence.* The proper remedy in the first instance is, by an information in the nature of a *quo warranto,* by which the rights of the parties may be tried." In the above case the relators swore that they had been duly elected to the offices to which they asked to be admitted. But it appeared from the case, that other persons were executing the duties. This case, it is conceived, is directly applicable, and points out the remedy that ought to have been pursued by Hubbard. Again, in the case of *Rex* v. *Bankes,* 3 Burr 1412, which was an application for a *mandamus,* the Court of King's Bench held "that the mayor *de facto* must be made a party to the rule to shew cause." In 4 Bac. ab. 515, title, *mandamus,* (E) the law is thus laid down: "But though the Court of King's Bench be intrusted with this jurisdiction of issuing out *mandamuses,* yet they are not obliged to do so in all cases wherein it *may seem proper,* but herein may exercise a discretionary power, as well in refusing as granting such writ, as where the end of it is merely a private right,

where the granting it would be attended with *manifest hardships and difficulties*," etc. Is it not apparent that *manifest hardship and difficulty* would ensue if this writ should be granted? Would it not have the effect to depose and eject from the office of governor a person who now fills it, and to which he has been duly elected by the people, and regularly qualified and inducted into office? And without his having opportunity *to shew cause* why so great a degradation should be meted out to him? And would not a great constitutional question be decided, although brought before the court collaterally, and without all the light that might be shed on the subject? And would not a great principle of natural justice be violated? I am clearly of the opinion that the *mandamus* ought not to be awarded.

This decision did not satisfy Gov. Hubbard or his party. They appealed to the General Assembly at its *called session*, called probably to meet this very emergency, but it declined to act in the matter, and it was dropped.

The Supreme Court was frequently called to consider cases arising from the existence of slavery in the State. A review of some of these cases clearly shows that slavery did exist as a legalized institution, and in most of these cases, Judge Lockwood, the most pronounced anti-slavery man on the bench, was selected to give the opinion of the court, and we may conclude that these decisions give the most favorable view possible, and the persons claimed as slaves or property had the advantage of every technical point which could be submitted in their favor. In the case of Nance, a girl of color, plaintiff in error, *vs.* John Howard, defendant in error, we note the following points: "The point presented to the consideration of the court in this case is, whether a registered servant is liable to be taken and sold on execution?

"By the act concerning judgments and executions, approved Jan. 17, 1825, 'all and singular, the goods and chattels, land and tenements, and real estate of a judgment debtor shall be liable to be sold on execution.' * * * The phrase, *goods and chattels*, means personal property in possession. Are, then, registered servants goods or chattels, within the meaning of the statute? This is a question of mere dry law, and does not

involve, in its investigation and decision, anything relative to the humanity, policy or legality of the laws and constitution authorizing and recognizing the registering and indenturing of negroes and mulattoes." After reciting in full the various territorial and state laws covering this point, showing conclusively that these indentured servants are property taxable as other property, transferable from one owner to another under certain conditions, passing by inheritance to legal heirs, Justice Lockwood gives this opinion, sustained by the other judges: "I have, therefore, come to the conclusion that indentured and registered servants must be regarded as goods and chattels and liable to be taken and sold on execution."

PHŒBE, A WOMAN OF COLOR, PLAINTIFF IN ERROR,
vs.
WM. JAY, DEFENDANT IN ERROR.

OPINION OF THE COURT, BY JUSTICE LOCKWOOD.

This is an action of trespass, assault, battery, wounding, and false imprisonment, to which the defendant plead, that the plaintiff, on the 26th day of November, 1814, before William C. Greenup, clerk of the court of common pleas of Randolph county, Illinois Territory, agreed to, and with, one Joseph Jay, the father of this defendant, and who is now deceased, to serve him as an indentured servant for and during the term of forty years, from and after the day and year aforesaid, and then and there entered into and acknowledged an indenture, whereby she bound herself to serve the said Joseph Jay, forty years next ensuing said date aforesaid, conformably to the laws of Illinois Territory respecting the introduction of negroes and mulattoes into the same; and defendant avers that the said Joseph has since departed this life, leaving this defendant, his only son and heir at law, who is also his administrator; that plaintiff came to his possession lawfully, after the death of said Joseph; that in order to compel plaintiff to attend to and perform the duties of an indentured servant, in doing the ordinary business of him, the said defendant, and remaining in his said service, he had necessarily to use a little force and beating, which is the same trespass, etc. To this plea the plaintiff demurred, and the defendant joined in demurrer. The circuit

court sustained the plea, and thereupon the plaintiff obtained leave to withdraw her demurrer and reply.

Several replications were filed, to which defendant demurred, and the demurrers were sustained and judgment given on the demurrers for the defendant. To reverse which judgment a writ of error has been brought to this court. From the conclusion I have arrived at, I deem it unnecessary to state the matter or legality of replications. The first question presented by the case is, whether the "Act concerning the introduction of negroes and mulattoes into this territory, passed 17th September, 1807," by the Territory of Indiana, and continued by the Territory of Illinois, was not a violation of the sixth article of the ordinance of Congress, passed 13th July, 1787, for the government of the territory of the United States northwest of the Ohio river. That portion of the ordinance applicable to this case reads as follows: "There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crime, whereof the party shall have been duly convicted." The first, second and the third sections of the act of 1807 are as follows: "It shall and may be lawful for any person, being the owner or possessor of any negroes or mulattoes, of and above the age of fifteen years, and owing service or labor as slaves in any of the states or territories of the United States, or for any citizen of the said states or territories purchasing the same, to bring the said negroes and mulattoes into this territory." Sec. 2: "The owner or possessor of any negroes or mulattoes, as aforesaid, and bringing the same into this territory, shall within thirty days after such removal, go with the same before the clerk of the court of common pleas of the proper county, and in the presence of said clerk the said owner or possessor shall determine and agree to and with his or her negro or mulatto, upon the term of years which the said negro or mulatto will and shall serve his or her said owner or possessor, and the said clerk is hereby authorized and required to make a record thereof in a book which he shall keep for that purpose." Sec. 3. "If any negro or mulatto, removed into this territory, as aforesaid, shall refuse to serve his or her owner, as aforesaid, it shall and may be lawful for such person, within sixty days thereafter, to remove the said negro or mulatto to any place which, by

the laws of the United States or territory, from whence such owner or possessor may or shall be authorized to remove the same."

If the only question to be decided, was whether this law of the territory of Illinois conflicted with the ordinance, I should have no hesitation in saying that it did.

Nothing can be conceived farther from the truth, than the idea that there could be a voluntary contract between the negro and his master. The law authorizes the master to bring his slave here, and take him before the clerk, and if the negro will not agree to the terms proposed by the master, he is authorized to remove him to his original place of servitude. I conceive that it would be an insult to common sense, to contend that the negro, under the circumstances in which he was placed, had any free agency. The only choice given him was a choice of evils. On either hand servitude was to be his lot. The terms proposed were slavery for a period of years, generally extending beyond the probable duration of his life, or a return to perpetual slavery in the place from whence he was brought. The indenturing was in effect an involuntary servitude for a period of years, and was void, being in violation of the ordinance, and had the plaintiff asserted her right to freedom previous to the adoption of the constitution of this state, she would, in my opinion, have been entitled to it. But, by the third section of the sixth article of the constitution of the state, "Each and every person who has been bound to service by contract or indenture, in virtue of the laws heretofore existing, and in conformity to the provisions of the same, without fraud or collusion, shall be held to a specific performance of their contracts or indentures, and such negroes and mulattoes as have been registered in conformity with the aforesaid laws, shall serve out the time appointed by such laws."

And here, certainly, a very grave question arises, and that is, if these indentures were originally void, can any subsequent act, and that without the consent of the persons most interested, make them good? I readily concede that no subsequent legislative act could have made the indenture valid. Can, then, this constitutional provision make a void indenture valid? In order more fully to understand this question, it will be necessary

clearly to ascertain the difference between an an act of the legislature and a constitutional provision. What is meant by the term *constitution*, as applied to government? It is the form of government instituted by the people, in their sovereign capacity, and in it are determined the condition, rights and duties of every individual in the community.

From the decrees of the constitution there can be no appeal; for it emanates from the highest source of power, the sovereign people. Whatever condition is assigned to any portion of the people, by the constitution, is irrevocably fixed, however unjust in principle it may be. The constitution can establish no tribunal with power to abolish that which gave and continues such tribunal in existence. But a legislative act is the will of the legislature, in a derivative and subordinate capacity. The constitution is their commission, and they must act within the pale of their authority, and all their acts contrary, or in violation of the constitutional charter, are void.

If they have no power to pass an act, any number of repetitions of unconstitutional acts, or acts beyond the pale of their authority, can never make the original act valid. As it respects the territorial legislature, the ordinance had the same controlling influence over its acts as a constitution has over the legislature of a state. By this course of reasoning, I conclude that, although the act of the territory, in relation to indenturing negroes and mulattoes, was originally void, yet it enumerated a description of persons whose condition in life and the rights they shall possess in this community, the constitution of the state has undertaken to fix. It has determined that they shall serve their masters according to the provisions before recited. It was, however, urged on the argument of this cause, that the people of this state, when they assembled in convention, were not absolutely free and independent and at liberty to adopt what frame of government they chose, for they were controlled by the constitution of the United States and by the ordinance of 1787. The provision of the third section of the sixth article of the constitution of this state does not, as I conceive, in any way conflict with the constitution of the United States. Several of the states, in the formation of their constitutions, have ingrafted into them

provisions relative to the right to hold persons in slavery, without objection. The ordinance, however, is no doubt still binding upon the people of this state, unless it has been abrogated by *common consent.* By *common consent*, I understand the United States and the people of this state, and wherever they shall agree that the whole or any part of the ordinance of 1787 shall be repealed, it will, so far as it affects this state, become a dead letter. The people of this state, by recognizing the validity of the indenturing and registering of servants in pursuance of the act of 1807, before referred to, gave their consent to alter so much of the ordinance as was repugnant to the constitution of this state. When the constitution of this state was presented to Congress, in order to our admission into the Union, the attention of that body was called to that clause of our constitution which requires that registered and indentured servants shall be held to serve pursuant to said act, and which was contended, and if I mistake not, was conceded to be a violation of the ordinance. Congress, however, admitted this state into the Union, with this constitutional provision, and thereby, I think, gave their consent to the abrogation of so much of the ordinance as was in opposition to our constitution. Having thus shown that registered and indentured servants are bound to serve, the next question that arises in this case is whether the defendant has set forth sufficient matter in his plea to support his claim to the services of the plaintiff. Several objections have been made to the plea. Those which are deemed important I shall notice:

1. That the plea does not state the existence of those facts which would authorize the indenturing, to wit: that she owed service to Joseph Jay; was above fifteen years of age; and that the indenturing took place within thirty days after she was brought into the territory.

2. That by the death of Joseph Jay the indenture ceased to have any operation.

3. The plea is uncertain whether defendant claims the service in virtue of his administration or his heirship; and,

4. That the plea does not answer the wounding.

As it regards the first objection, it evidently appears from the constitution that it does not intend to confirm every indenture.

It only saves those that were made "in conformity to the provisions of the law, without fraud or collusion." If the court could not inquire beyond the fact of indenturing, then this provision of the constitution would be useless and absurd. But upon the ground assumed to sustain the validity of these indentures, no doubt can exist that, unless the indenturing was in conformity to the law it is void. On whom then must the *onus probandi* rest? I should think, in ordinary cases, on the party who sets up a claim, founded on statute, and in derogation of common right. It was, however, on the argument, urged with great force, that if it was incumbent on the master, after a lapse of several years, to prove that every requisite of the statute had been complied with, it would subject the master, in most cases, to great inconvenience and expense, and in many cases to loss of services that the constitution had secured to him. Witnesses might forget, remove or die, and thus by the lapse of time and accident claimants be deprived of their proof. It was also urged that something ought to be presumed in favor of records that the officers had done their duty. These arguments possess considerable weight, and I feel it the duty of the court, in deciding on the point, to allow them to have some influence.

If the injury complained of had consisted in constraint imposed on the plaintiff soon after the time of indenturing before the clerk, and no subsequent imprisonment of the plaintiff had taken place, the statute of limitations would have barred the action in five years, and the defendant would not then have been bound to have plead a right to restrain the plaintiff's liberty under the indenture. The statute of limitations was made for the purpose of quieting parties after so much time has elapsed as affords a presumption that the evidence might be lost by death or forgetfulness. That this statute is a wise law, all who are conversant with trials in courts, and the frailty and forgetfulness of mankind, will readily concede. The law, therefore, discourages law suits, after so much time has intervened as to create the presumption that witnesses have died or forgotten the transaction; or, in other words, the law favors the diligent, and not the slothful. Had the plaintiff brought an action within five years after the commencement of what she complains of as an unlawful

restraint on her liberty, I should have been clearly of opinion that it was incumbent on the defendant to have shown, not an indenturing only, but that the indenture had been made "in conformity to the provisions of law." But after a period of more than ten years has elapsed, and an acquiescence in the mean time of the plaintiff, I think it would impose what would in some cases be impossible, and in all, an unreasonable hardship, to require the defendant to plead and prove all the facts necessary to show the validity of the indenture. I am, therefore, of opinion, under the circumstances of this case, that it was unnecessary in the plea to aver the existence of the facts to warrant the making of the indenture in question. As, however, this opinion is based on legal presumption, it would certainly be competent for the plaintiff, by way of replication, to state facts inconsistent with these presumptions, and thereby take upon herself the burthen of proving that they had no existence. The second objection to the plea is, "that by the death of Joseph Jay the indenture ceases to have any operation." The act "concerning the introduction of negroes and mulattoes into this territory," passed September the 17th, 1807, contains no provision as to the consequences of the death of the master, upon the indentured servants. But by the third section of the sixth article of the constitution of the state, before referred to, it is declared that "each and every person who has been bound to service, by contract or indenture, in view of the *laws* of Illinois Territory, shall be held," etc. From this phraseology, it would seem that the convention recognized the existence of more than one law that had reference to the indenturing and registering of negroes and mulattoes.

It hence becomes necessary to inquire into all the laws of the territory, in relation to this description of persons. By the seventh section of the act entitled "an act concerning executions," passed the 17th of September, 1807, being the same day on which the indenturing law was passed, it is enacted "That the time of service of such negroes or mulattoes may be sold on execution against the master, in the same manner as personal estate, immediately from which sale the said negroes and mulattoes shall serve the purchaser or purchasers for the residue of their terms

of service." By the act entitled "an act to regulate county levies," passed the same day, "bound servants" are declared to be taxable as property. And by the third section of the act entitled "an act concerning servants," passed on the said 17th day of September, 1807, it is declared that "the benefit of the said contract of service shall be assignable by the master to any person being a citizen of this territory, to whom he shall, in the presence of a justice of the peace, freely consent that it shall be assigned, the said justice attesting such free consent in writing, and shall also pass to the executor, administrators and legatees of the master." But by a strict and literal construction of the language employed in the first section of this statute, to which the word *contract* in the third section refers, it might be considered doubtful whether the words "negroes and mulattoes," under contract to serve another, embrace the negroes and mulattoes registered and indentured under the act "concerning the introduction of negroes and mulattoes into the territory," or only negroes and mulattoes who shall come into the territory under "contract to serve another." But when it is recollected that the convention supposed there were several laws on the subject of registered and indentured servants, I have no hesitation in concluding that the act concerning servants embraced indentured servants. It is also a rule in the construction of statutes, that the sense which "the contemporaneous members of the profession had put upon them," is deemed of some importance, according to the maxim that "*contemporanea expositio est fortissima in lege.*" 1 Kent's Com., 434. I have been informed that the members of the bar always understood the act concerning servants had application to indentured and registered servants, and upon that opinion the community at large have supposed that these persons might be sold, with the consent of the servants, and that they went to the administrator in course of administration. It is a further rule, in construing statutes, that several acts in *pari materia*, and relative to the same subject, are to be taken together and compared, in the construction of them, because they are considered as having one object in view, and as acting upon one system. This rule applies, though some of the statutes may have expired, or are not referred to in the other acts. 1 Kent's

Com., 433. The first legislature after the adoption of the constitution of this state, in the act entitled "an act respecting free negroes, mulattoes, servants and slaves," passed the 30th of March, 1819, adopted the third section of the "act concerning servants," *verbatim*, though from the context it does not appear that any contract of service is before spoken of. This section of the act of 1819 cannot have any object or meaning, unless it have reference to the indentured and registered servants mentioned in the constitution. I thence conclude that the third sections of the act "concerning servants," and the 11th section of the act of 1819, embrace indentured and registered servants, and consequently, upon the death of Joseph Jay, the plaintiff went to the administrator as assets. The third objection to the plea is that it is uncertain whether the defendant claims the service in virtue of his being administrator or heir. This objection is, I think, fatal. The plea, in this respect, is wholly indefinite. If the defendant claims the plaintiff in his character as heir, there is no law to sanction his claim. If the services of the plaintiff are to be considered as property, by the common law, they would go as assets to the administrator, and the statutes I have referred to give the same direction. Should the party claim the plaintiff as administrator, still the plea would be bad, as the administrator would only have the custody of the plaintiff for safe keeping until her time of service should be sold. As administrator he had no power to compel the plaintiff "to attend to the ordinary business of him, the said defendant." On the ground that the plea is too uncertain as to the character in which the defendant claims the services of the plaintiff, and upon the further ground that in neither capacity can the defendant claim her services, the judgment must be reversed. The plea is also defective, in point of form, for not answering the wounding. It was urged on the argument, that plaintiff, having demurred to defendant's plea, and having subsequently withdrawn it, and replied, upon the demurrer's being overruled in the court below, it is now too late to object to the plea. The withdrawing the demurrer is as if it had never been put in. Consequently, when a good declaration is filed the defendant must interpose a good bar, or else, the plaintiff is entitled to recover. It is a rule of pleading, that "a

demurrer by either party has the effect of laying open to the court, not only the pleading demurred to, but the entire record, for their judgment upon it, as to the matter of the law." 1 Saund. 285 (n. 5.) And, "if two or more of the pleadings be bad in substance, the court will give judgment against the party who committed the first fault." Archbold's civil pleadings, 351. Therefore, notwithstanding the plaintiff's replication may be bad, of which I give no opinion, if the plea also be bad, judgment must be for plaintiff. I am of opinion that judgment must be reversed, with costs, and the proceedings be remanded to the Randolph circuit court, with liberty to defendant to amend his plea, on payment of the costs occasioned thereby.

This proved to be one of the most important cases ever brought before our supreme court, as the rulings under it were held to establish the constitutionality and legality of the acts relating to indentured servants, and thus established in our state this form of slavery, which continued until the adoption of the new constitution in 1848.

If it should be asked, How could a man of such pronounced and decided anti-slavery sentiments render such an opinion? it must be remembered it is the duty of a judge to interpret the laws; not to make or amend them. Our first constitution did recognize and establish this form of slavery, and the justices of our supreme court could not ignore that fact, however much they might deplore it.

CHAPTER IX.

CONFLICT BETWEEN THE LEGISLATURE AND THE SUPREME COURT.

REFERENCE has already been made to this conflict; but it requires farther consideration. The conflict arose in part, from the character and conduct of the first judges; in part, from the influence of political and partisan issues; but was due, mainly, to a popular dislike of our whole judicial system. We have seen that there was a good deal of hard feeling in the legislature over the election of the new judges at the session of 1824–25. This was a time of great political excitement. The question of slavery was agitating the whole country. The era of good feeling under President Monroe, was abruptly terminated by the results of the presidential election of 1824. In all these matters Illinois was greatly interested. Active partisans were ready to stir up strife. In the controversy over the admission of Missouri, our senators, Thomas and Edwards, favored the compromise, and according to Stuvé, first suggested as the northern boundary line of slavery 30° 30.′ On the other hand, our representative, Daniel P. Cook, opposed the admission of Missouri on constitutional grounds, as he explained; but the pro-slavery party would listen to no explanations, and in most bitter terms denounced Mr. Cook and all his anti-slavery friends. In the presidential election of 1824, Illinois was very much divided in sentiment. The Kentucky element largely favored Henry Clay; the Tennessee and the more southern element favored Jackson; while the more northern and eastern influence, and the anti-slavery element favored John Q. Adams. The result was a divided electoral vote.

In the election by the House of Representatives, Mr. Cook, our sole representative, gave the vote of the state to Mr. Adams. In all these measures, three out of the four judges—Wilson, Lockwood and Brown—were supposed to be in sympathy wth Mr. Cook, and shared in the denunciations heaped

on him. In subsequent years, these three judges, though in no sense partisans, were identified with the Whig party, leaving Judge Smith the only Democrat on the supreme bench. As we have seen, these justices of the supreme court were appointed by the legislature to hold office for life. This arrangement was becoming more and more unpopular, both as to the mode of appointment and term of office, and very unjustly manifested itself in the legislature in attempts to worry and annoy the judges. The real ground, however, of the hostility between these two branches of our state government, is found in the following constitutional provision: "The governor for the time being, and the judges of the supreme court, or a major part of them, shall be, and are hereby constituted a council to revise all bills about to be passed into laws by the general assembly; and for that purpose shall assemble themselves from time to time, when the general assembly shall be convened; for which nevertheless, they shall not receive any salary or consideration under any pretence whatever; and all bills which have passed the senate and house of representatives shall, before they become laws, be presented to the said council for their revision and consideration; and if upon such revisal and consideration, it should appear improper to said council, or a majority of them, that the bill should become a law of this state, they shall return the same, together with their objections thereto in writing, to the senate, or house of representatives, (in whichsoever the same shall have originated,) who shall enter the objections set down by the council, at large in their minutes, and proceed to reconsider said bill. But if after such reconsideration the said senate or house of representatives shall, notwithstanding the said objections, agree to pass the same by a majority of the whole number of members elected; it shall, together with said objections, be sent to the other branch of the general assembly, where it shall also be reconsidered; and if approved by a majority of all the members elected, it shall become a law."

In some respects this constitutional provision was of great benefit as preventing a great amount of crude, unconstitutional and contradictory legislation, but it disregarded that great principle in our republican government, that the three branches of

the government must be kept separate and distinct. Practically, three of the supreme judges had a *quasi veto* power on the acts of the legislature, even when the legislature was sustained by the executive. And in times of political excitement, when a majority of the judges were politically opposed by the majority party in the general assembly, and the executive, the decisions of this court of revision would be attributed to party feeling, and subject the judges to suspicion and abuse. Unfortunately this was the case in the period we are now considering, and although there was nothing in the conduct of the judges to call for, or justify any such treatment, they were, without any show of reason or justice, subjected to such an amount of misrepresentation, denunciation and threats of impeachment, as rendered their position almost unendurable. On several occasions, Judge Lockwood would have retired from his position, but for the earnest entreaties and solicitations of his many friends, irrespective of party lines. As one manifestation of this hostile spirit, the legislature at its session of 1826–27 reorganized the courts of the state. In the organization of the courts two years before, the state was divided into five circuits, and five circuit judges appointed, leaving to the supreme justices only appellate jurisdiction, with no circuit duties. The session of 1826–27 legislated four of the circuit judges out of office and assigned their circuits to the four supreme judges, thus greatly increasing their duties, and making a change of residence necessary on the part of at least one of them. The reason assigned for this change was economy, which was not then, nor ever has been, accepted as the true reason. And when we consider the duty of these judges, and the small compensation they received, the reason seems to us in these times little short of absurd. The combined salary of all the nine judges was only $6,200. The change saved the state only $2,400, while it proved such an injury to the state in necessary delays and postponement of cases, that in a few years a return to the old system was found necessary. We can hardly avoid the conclusion that the change was an effort of a strongly democratic legislature to secure the resignation of the Whig justices. Judge Lockwood was assigned to the northern circuit, and this necessitated a change of residence on his part. Accordingly he gave

up his home in Edwardsville, and in the fall of 1827 removed to Springfield, and the next fall to Jacksonville, where he resided until the spring of 1853. In 1840–41 this controversy between the two branches of government reached its climax, in which the conduct of the general assembly, and the work it accomplished, form a dark picture in our state history. A review of this matter will bring out the names of some men then young and just entering upon public life, who have since won honorable distinction. The statements here given are taken from Governor Ford's History, who was a lifelong Democrat, and at this time in full sympathy with his party, and was personally honored in the legislative action here referred to. Governor Ford's opinion of Judge Smith will be found elsewhere, but in this immediate connection he gives the following record as to the three Whig judges. "It is due to truth here to say, that Wilson and Lockwood were in every respect amiable and accomplished gentlemen in private life, and commanded the esteem and respect of all good men for the purity of their conduct, and their probity in official station. Wilson was a Virginian of the old sort, a man of good education, of sound judgment, and an elegant writer, as his published opinions will show. Lockwood was a New Yorker. He was an excellent lawyer, a man of sound judgment, and his face indicated uncommon purity, modesty and intelligence, together with energy and strong determination. His face was the true index of his character. Brown was a fine, large, affable and good-looking man, had a tolerable share of tact and good sense, a complimentary, smiling and laughing address to all men, and had been elected and continued in office on the ground that he was believed to be a clever fellow."

At this time Justices Wilson and Lockwood had rendered themselves obnoxious to the dominant political party by their decision in a case, covering a right of the governor to remove from office the secretary of state. Justice Smith, giving a dissenting opinion, and Justice Brown withholding his opinion, on account of family connection with the party interested. Thus the whole storm of partisan abuse was turned against Wilson and Lockwood. At this same time, another question of more general

importance was agitating the whole state. There were in the state, about 10,000 unnaturalized foreign voters, who under the loose construction of the constitution had exercised all the rights of suffrage of native born citizens. From natural affiliation, the Democratic party was sure of nine-tenths of this vote, and an exclusion of it would probably revolutionize the political standing of the state. The circuit judge, in the Galena district, had given a decision implying the illegality of this vote, and as the question must come to the supreme court by appeal, and as a majority of the justices of that court were known to be Whigs, the whole Democratic party was thrown into a great state of alarm and excitement, and the abuse of the judges assumed a corresponding degree of virulence. What the decision of the judges would be was only a matter of surmise, as they had not expressed an opinion. In fact, it never came before the supreme court in such a form that their decision touched the great question at issue. But the general assembly was in session, and the danger threatened led the party leaders to a piece of partisan strategy, which Governor Ford calls little short of "revolutionary." This was a reorganization of our judiciary. The state was, at this time, divided into nine circuits, with nine circuit judges. These nine circuit judges were legislated out of office; the number of supreme judges was increased to nine, and circuit duties assigned to each one of them. As the same legislature had the right of appointment, there could be no doubt as to the political complexion of the new court. It would stand six Democrats to three Whigs. But we hear no more of the charge of offensive partisanship from the Democratic side. In their debates and discussions over this question, there was a great amount of hard feeling engendered, and many harsh words spoken. This measure did not have the full support of the Democratic party, and the few men opposed it were denounced in unmeasured terms. In this connection we quote from Governor Ford: "The fate of some of these Democrats affords a melancholy lesson. They were denounced by their friends and turned over to the Whigs. But, so far as I know, they have ever since been found acting with the party, though they have never been able to recover its confidence. The excitement has gone

by; the party itself has been pretty generally convinced, that the system then adopted, ought to be abandoned; that the supreme court ought to be constituted as it was before; yet these Democrats, many of them, are still under the ban; so true it is, that in all party matters, a breach of discipline, a rebellion against leaders, is regarded as infinitely more offensive than the mere support of wicked or unwise measures, or opposition to good ones. A party never holds its members to account for supporting the worst sort of measures, or opposing the best ones, unless the leaders have made them the test of fidelity to party; but woe to him whose conscience is so tender, that he cannot support, or oppose, the measures decreed by his party! Woe to him who is guilty of a breach of discipline, or who rebels against leaders!"

A brief notice of the newly appointed judges will not be out of place. They were Thomas Ford, Sidney Breese, Walter B. Scates, Samuel H. Treat and Stephen A. Douglas. Three of these, Breese, Treat and Scates, had been circuit judges, and their appointment was a well deserved promotion. For many years they honored their position as judges with unquestioned integrity and marked ability. For Mr. Ford's appointment, some other reason must be found. He held the office for only two years, and was then elected governor of the state. As to Mr. Douglas, we quote from Stuvé and Davidson: "He had made a violent attack upon the old judges by a characteristic speech in the lobby, and had furnished McClernand the data upon which the latter denounced the court; in view of all of which, it seems strange that he had sought and obtained a position side by side with the gentlemen he had traduced and attempted so much to bring into disrepute. Partisan scheming and the cravings of office could not well go further." And to this it may be added, he was a member of the house of representatives, and the originator of the whole scheme, and its most efficient advocate. During all this controversy, so long as the abuse was confined to lobby speeches, anonymous newspaper articles, and unsigned hand-bills posted around the capital, the justices maintained a dignified silence. But in the heat of debate in the house of representatives, John A. McClernand

made a direct attack upon the justices with specific charges which could not be overlooked. John J. Hardin, also a member of the house, addressed a note to the justices, calling their attention these statements and urging upon them a public denial. To this communication the judges made the following reply, drawn up by Judge Lockwood and signed by all four of the justices:

SPRINGFIELD, Jan. 26, 1841.

JOHN J. HARDIN, Esq.

Dear Sir:—Your letter of to-day has just been received, and we proceed to answer it without hesitation.

In doing so, we can not, however, but express our great astonishment at the character of the statement to which you refer. You say that Mr. McClernand, a member of the house of representatives, has asserted in debate:—"I am authorized to say, and I do say on my own responsibility, if any such responsibility is needed, that the judges of the supreme court prepared an opinion against the right of foreigners to vote, at the last June term of that court, but on account of objections made by counsel to a mistake in the record, they withheld their opinion, but did so most reluctantly. The opinion has gone abroad that these judges have made the decision, recently delivered, on the subject of the right of foreigners to vote, in order to defeat the bill under consideration, and to prevent these judges going on the circuit."

To this statement we give the most unqualified denial in all its points; neither of the members of the court having ever prepared, or written, any opinion against the right of aliens to vote at elections. "As to the insinuations, that the decision of any case was made at the time to defeat the judiciary bill, we reply: it is in all its parts equally unjust, and without a pretense for its justification."

We have thus promptly complied with your request, and we cannot close this communication, without remarking the great injustice done to ourselves, not only by the statement referred to, but the numerous other slanders, which, in our situation, we have no means of repelling.

We have the honor to be, respectfully your obedient servants,

THOS. W. SMITH. WM. WILSON.
SAMUEL D. LOCKWOOD. THOMAS C. BROWN.

To meet this denial, Mr. McClernand gave, as authority for the statements made, the name of Stephen A. Douglas, and Mr. Douglas, to meet this pressure brought upon him, was compelled to give the name of Thos. W. Smith, the Democratic justice, and substantiated his statement by the certificate of six others of the members of the house of representatives, that they had heard Justice Smith make the same charge against his associates. Stuvé says, "There is now no doubt that Smith made the former statement, nor is there any doubt that it was false."

"As to Judge Smith," says Gov. Ford, "he made nothing by all his intrigues. By opposing the reform bill, he fell out and quarrelled with the leaders of his party. He lost the credit he had gained by being the Democratic champion on the bench, and failed of being elected to the United States Senate; and was put back to the laborious duty of holding circuit court." He farther adds: "Judge Smith, (I regret to say it of a man that is no more) was an active, bustling, ambitious, and turbulent member of the Democratic party. He had for a long time aimed to be elected to the United States Senate; his devices and intrigues to this end had been innumerable. In fact, he never lacked a plot to advance himself, or blow up some other person. He was a laborious schemer in politics, but his plans were always too complex and ramified for his power to execute them. Being always unsuccessful himself, he was delighted with the mishaps alike of friends and enemies; and was ever chuckling over the blasted hopes of some one." In this connection it may be added, that in 1833 Judge Smith had been impeached by the house of representatives on several charges of gross misdemeanor in office, and only escaped conviction by the senate, by that provision of the constitution which required a two-thirds vote of that body to sustain the charges.

The council of revision did not, of course, approve the judiciary bill, and returned it to the house with their objections clearly and forcibly stated. This document was drawn up by Judge Lockwood. The bill, however, was repassed, but in the house by a constitutional majority of only one, and that one vote was given by a member who opposed the bill on its first passage, and who immediately after was appointed clerk of the supreme court as

newly organized, the five new judges, without any consultation whatever with their associates, turning out the old clerk and putting this new man in his place. The spirit of the general assembly is shown by its treatment of Judge Brown, in assigning the judges to the different circuits. His home was in Shawneetown, the extreme southern part of the state, where he had resided and held the office of judge since the organization of the state. Now in his old age he was assigned to the Galena circuit. This was done with the hope that it would secure his resignation. This not proving successful, an attempt was made to remove him from office by action of the general assembly on the following charges, signed by several prominent lawyers, specifications as follows: "That he had not the natural strength of intellect, and lacked the legal and literary learning, requisite and indispensable to the high and responsible duties devolving upon him as a judge of the supreme court; that his opinions delivered in that court were written and revised by others, and that his decisions on the circuit had been the mere echo of some favorite attorney; and that by nature, education and habit he was wholly unfit for his high position." This stirring language indicated something more than a purpose to solely subserve the public good; however, the general assembly took no action in the matter.

These incidents are here recited for the sole purpose of indicating, and keeping in mind, the great obligation of the state to Justices Wilson and Lockwood in maintaining the integrity and high standing of its supreme judiciary, whose reports have ever held a good standing as compared with older and much more favored states.

This was the most trying period of Judge Lockwood's life, and for the next seven years, his position was extremely unsatisfactory. His official duties, hitherto burdensome, were largely increased, and required an absence from home the larger part of the year, and during sessions of the supreme court he had to take his place side by side with men who had maligned, slandered and abused him.

to suppress and eradicate crime? It is, gentlemen, a melancholy truth that it does not. Is there, then, no means within the power of man to greatly diminish, if not wholly to suppress, the commission of vicious and criminal acts? Yes, gentlemen, much, much can be done in aid of the law to reform society and stay that moral pestilence that wasteth at noonday, which is daily destroying not only the virtue of the community, but both the souls and bodies of men.

I feel it my duty, gentlemen, to speak candidly and plainly to you on this subject, and my only object is to do good. I trust my motive may be my apology for pressing this subject on you, on myself, on all that hear me.

The vice that in our country is most predominant, and that is hurrying such great numbers of its votaries into crime, ruin and the grave, is that of intemperance. It is said by St. Paul that the love of money is the root of all evil; but if the love of money be the root, the love of intoxicating drink, in our day and in our country, has become its most luxuriant and pernicious branch. The extravagant use of strong drink is not confined to the lowest and basest part of the human family; it has extended itself into every rank and station of life. We are all more or less subject to its influence. There is no doubt that it is the fruitful source of at least three-fourths of all the crime, disease, misery and ruin with which mankind is afflicted. It is the pestilence that is carrying thousands to an untimely grave.

The drunkard not only ruins himself for time and for eternity, but he involves in his ruin his innocent wife and children; and not only so, but he frequently entails upon them disgrace and poverty. A great poet has said: "Every inordinate cup is unblessed and the ingredient a devil." That this is true, hundreds can testify. Many a miserable man, in swallowing an unnecessary draught of ardent spirits, has, unawares, swallowed a devil, who has instigated him to the commission of a crime, that has not only brought the wretched man to a disgraceful end, but has involved a virtuous family in wretchedness, poverty and contempt.

How can this dreadful scourge of our fellow-beings be stayed, be arrested in its dreadful career? Laws, from sad experience

we have learned, are totally ineffectual. Is there then no remedy? Yes, gentlemen, there is one, and but one remedy that is within our feeble reach; and that is, let every lover of his country, every lover of his neighbor, every well-wisher to morals and religion, in fact every worthy man, set a good example to all around him, by wholly abstaining from the use of ardent spirits. One good example is worth twenty precepts. Preach we never so well, if our life does not conform to our doctrine, who will give heed to our preaching? If we sincerely wish the reformation of our fellow men, let us all begin the good work at home. Should the officers of goverment, the grand jurors of the respective counties, together with all the well-wishers of society, commence the blessed work of reform by refusing to use, and discouraging the unnecessary use in others, of ardent spirits, we should shortly witness greater benefits to society than all the wealth that the mines of Mexico could bestow.

Intemperance would thus give place to peace and good morals in society, which would prevent such a useless waste of time and money. This state of things would soon become a parent of great virtues, such as temperance, prudence, economy and industry. Should these virtues greatly predominate in our country, vice would hide its head abashed, and we might hope, without presumption, that crime would almost wholly disappear. With the prevalence of these virtues, most of the pecuniary distresses of men, arising from what is falsely called hard times, would cease. Our fertile soil would then remove poverty from our land. It never has been, and it never will be the case, that the practice of the virtues I have enumerated has not placed those who possessed them above the reach of want and hard times.

To bring about such happy, such beneficial results, only requires that the well-disposed part of the community should put their shoulder to the wheel of reform; and others, seeing their good works, will soon be disposed to do likewise.

Gentlemen, I am not combatting an imaginary evil,—would to God I were!—but one of which every court-yard, every election, almost every public gathering, every docket of the court, is pregnant with evidence as strong as "proof from Holy Writ."

Unless something is done, and done quickly, too, the disease will be past cure. A people sunk down into the mire of intemperance presents one of the most disgusting, and at the same time one of the most hopeless cases of human depravity and degradation. Let us then awake before the evil becomes too powerful to grapple and overthrow. Every day's delay is teeming with danger to the best interests of our beloved country. That each of us may feel the importance of the subject is my most ardent desire.

Such clear and vigorous utterances may, in our day, seem quite commonplace; but it was quite otherwise when this charge was given to the jurors in our state. At that time the use of intoxicating drinks was well nigh universal; and intemperance was not regarded as a sin, even in the church. The temperance lecturer had not made his appearance and would not have been tolerated in any assembly of the people.

As an advocate of such total abstinence, Judge Lockwood stood well-nigh alone. Public sentiment, strong and bitter, was on the other side. Bench and bar and authorities in state and church stood united in opposition. To take such a stand required a heroic courage, and indicated a true nobility of character worthy of all honor. Happy the state that in the formative period of its history had as its leading justice in its supreme court a man of such integrity and courage.

CHAPTER XI.

THE SLAVERY CONFLICT.

THERE are few men of the present generation who have any correct idea of the conflict in Illinois over the question of slavery.

It was a severe and bitter conflict, pervading political, business, social and religious circles, disturbing the courts of justice, and, with wide-reaching results, affecting not only the state, but the whole country. Without exaggeration, it may be said, Illinois was the battle-ground of freedom for the nation.

The act of Congress providing for the organization of the Northwest Territory, now celebrated as the Ordinance of 1787, did in words, exclude slavery from Illinois, but practically, this prohibition was in many respects a dead letter. Slavery among the old French settlers existed as an established institution, recognized and enforced by French, English and Virginian authorities. The rights of the slaveholders were guaranteed in treaty stipulations, and in the cessions made by Virginia to the United States. The ordinance of 1787 disregarded these treaty stipulations, and the courts of the country must decide between the conflicting authorities. In Illinois the lower courts sustained the claims of the slave owners, and on an appeal to the supreme court it was found that that judiciary was equally divided in opinion, Justice Lockwood and one of his associates deciding for freedom, and the other two for slavery, so the appeal failed, and this form of slavery for the time being had the sanction of our courts.

This condition of things continued till the reconstruction of our judiciary system added five new justices to the supreme court, and a growing public sentiment in opposition to slavery secured the appointment of anti-slavery men to some of the new positions. In 1843 another appeal on this troublesome question was taken to the supreme court, and after a delay of nearly two

years, a decision was rendered by a bare majority of the justices sustaining the ordinance of 1787, and virtually giving freedom to all these so-called French slaves.

In previous chapters we have referred to that form of slavery introduced into the territory by an act relating to indentured and apprenticed servants. Under this system the families coming from southern states were able to retain their domestic servants, and families from the northern states were in many cases compelled to countenance and favor this form of servitude, for in no other way could the necessary household help be secured. Under still another form, slavery had gained admission upon our so-called free soil. In 1816 the United States government leased the salt springs in southern Illinois to a private company with a right to employ slave labor to carry on the works. This may seem a trifling matter, but it ignored the ordinance of 1787, and in and around Shawneetown slavery was a recognized institution, and within certain limitations was legalized by the constitution of the state.

Under these various forms slavery had become a familiar institution, largely regarded as a necessity, and a proposition to give it permanence and a fuller sanction of law by constitutional enactment caused but a slight shock to public sentiment. It would require but little change in our statutes, where these servants were regarded as mere chattels to be bought and sold, taxed and liable to attachment for debt as any other property.

The current advertisements in the newspapers would not require much change, as witness the following, taken from the "Missouri Gazette" and "Illinois Advertiser."

FIFTY DOLLARS REWARD

Will be given to any person who will deliver to me, in Cahokia, a negro boy named Moses, who ran away from me in Cahokia about two months since. He is about sixteen years old, well made, and did belong to Messrs McKnight & Brady, in St. Louis, where he has been since frequently and is supposed to be harbored there, or about there. He had on a hunting shirt when he left me, May 14, 1816.

John Reynolds.

Rather a novel idea for a fugitive slave to escape from Illinois into Missouri.

Two years later this John Reynolds was, as we have seen, elected one of the associate justices of our supreme court, and in 1830 governor of our state.

The following is given rather as an index of the times and not of the man, and is taken from the "Illinois Herald," published in Kaskaskia, Oct. 1, 1815.

NOTICE.—I have for sale 22 slaves. Among them are several of both sexes, between the ages of 10 and 17 years. If not shortly sold, I shall wish to hire them in Missouri Territory. I have also for sale a full-blooded stud horse, a very large English bull, and several young ones.

October 1, 1815. NINIAN EDWARDS.

Mr. Edwards was at this time the most honored and influential man in the territory, and as governor had taken the solemn oath to sustain the constitution and laws of the United States. Evidently, the ordinance of 1787 was passing into "innocuous desuetude."

All these considerations in favor of slavery were greatly intensified by the admission of Missouri into the Union with its pro-slavery constitution, and there was on all sides an avowed determination to effect a corresponding change in the constitution of Illinois.

The road from Shawneetown to Kaskaskia was a busy thoroughfare, crowded with emigrants from the older states to the new and richer territories. These in-comers could be divided into two classes. There were the poor whites, mostly from Tennessee, with their meager outfit, lazy habits and low aspirations, seeking cheap homes in Illinois; and there were the wealthy planters with their well-provided equipage, with household effects and family servants, passing through Illinois to the state beyond with its more favored institutions. Ignorance and poverty were seeking a home in Illinois, while wealth, refinement, business activity and enterprise were passing through on its thoroughfares to regions beyond.

Such was the view of the case presented by the advocates of slavery, and to their minds demanded an immediate change in

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our institutions, or Illinois would be given up to ignorance and poverty.

There were no insuperable obstacles in way of such a change. It was provided in the cession made by Virginia, that the Northwest Territory should be divided into states, to be admitted into the Union with all the rights of sovereignty belonging to the original states, and no one doubted that that sovereignty included the control of its own domestic institutions. The constitution of Illinois made it the duty of the general assembly, whenever two-thirds of its number should think it necessary to alter or amend the constitution, to recommend to the electors at the next election of members to the general assembly to vote for or against a convention for such purpose, and if it shall appear that a majority of all the citizens voted for a convention, the general assembly shall at their next session call one, to be held in time and manner specified. Under this provision of the constitution, the plans of the pro-slavery party soon took definite shape.

The conflict is to be over this question—convention, or no convention; and the contestants are to be known as convention or anti-convention men. Convention means a new constitution legalizing slavery. Anti-convention means a condemnation of slavery, and a pledge of its entire removal from the state.

There are evidently two great battles to be fought, and the convention party must win them both, or fail. It must secure a two-thirds majority in the next general assembly to order a popular vote on the convention question, and in that popular vote must secure a majority in favor of the convention.

Previous to these great battles, however, there are some preliminary skirmishes worthy of notice.

At first all the official positions in the state were held by pro-slavery men. If Governor (at this time Senator) Edwards be claimed as an exception, it must be said of him, that he was a slaveholder, as senator had favored the admission of Missouri to the Union, and had the support of the pro-slavery party.

Mr. Flower, writing from personal knowledge, thus sums up the case: "Our influential men and all who held office, from the governor to the constable, were from slave states. Every sheriff and every clerk of the county were pro-slavery men.

Every lawyer and all our judges were from slave states and pro-slavery. I know of but one exception in the whole bar that attended our courts, and that was Samuel D. Lockwood."

The first skirmish was in the general assembly of 1820-21, where this solid official front was broken by the election of Samuel D. Lockwood to the office of attorney general. This skirmish was not a trifling matter, and the result was of much more importance than is indicated in any history. There were three prominent candidates representing three different views of this slavery question. One, the ultra extreme sentiment—slavery right in itself, a divine institution necessary for the happiness and prosperity of the state. One, more conservative,—slavery an existing institution, right under existing circumstances, an evil perhaps, but an evil to be made the best of. The other, outspoken in the sentiment,—slavery is an evil and a curse, and must be kept out of, and exterminated from our grand and noble state. Each candidate, of course, had his own friends, and such personal considerations had to some extent their influence, but the trial was on the main issue. There were forty-two members of the assembly present, and of these Mr. Lockwood had the constant and steady support of just one-third, indicating probably the real strength of the anti-slavery party. The other two-thirds were divided and unsettled in their action, and in the strife, got angry with each other. Eighteen ballots were taken on Tuesday without reliable gain by either party, and the question was postponed till the next Saturday, when on the third ballot Mr. Lockwood received twenty-three votes, and strange as it may seem, gained this outside support from the ultra pro-slavery faction.

This was the first rally of the anti-slavery forces. It secured a party organization and a recognized leader, and the victory was an inspiration in all the coming conflict.

The second skirmish was of like import, though on a much broader field. This was the election of Edward Coles in August, 1822, as the second governor of the state. This was one of the most wonderful incidents in our political history, state or national. The convention party, now well organized, was confident of a two-thirds majority in the state, and was undoubtedly correct in this opinion. Still the opposition was not disposed to surrender

without a conflict. Its adherents would make the best fight possible. For this purpose, they nominated a full state ticket with Edward Coles at its head, as candidate for governor. Mr. Coles was probably the one man in the state most obnoxious to the convention party. A Virginian of marked ability, and eminent standing in his native state, with ample means and most advantageous family and social connections, he had turned his back upon his old home, and the most flattering prospects, simply on account of his conscientious opposition to slavery. He had emancipated his slaves, brought them with him to Illinois and provided for their comfortable support. This was a trumpet blast for freedom whose echoes would not cease. This was like the voice of the prophet crying in the wilderness, which could not be silenced, and as in the olden times, there were not a few who would gladly have his head, politically at least, brought to them in a charger.

The convention party had nominated Chief Justice Joseph Philips as its candidate; a man of good standing with the people, and there seemed nothing in the way of his triumphant election. But for some unaccountable reason a fraction of the party became alarmed at some indications of opposition to Judge Philips, and in the panic, nominated a third candidate, Judge Thomas C. Brown, who, they thought, would absorb the opposition against Philips, and draw many from the support of Mr. Coles.

The result was a surprise to all parties, and an earthquake shock to the convention leaders. Judge Brown drew a large vote to himself, but to the wonder of all, he drew it from Philips, and not from Coles. The figures of the election furnish an interesting study. A fourth candidate, Gen. James B. Moore, received a small support. The figures stand as follows: Coles, 2,810; Moore, 522; Philips, 2,760; and Brown, 2,543; an aggregate of 8,635 votes; showing that Edward Coles had a plurality of only fifty votes over Judge Philips, and was elected governor with less than a one-third popular vote in his favor.

This result must be regarded as providential. The God of battles was on the side of freedom in Illinois. This victory gave to the anti-convention party a commander-in-chief, a true

nobleman, in every way well qualified to organize and strengthen his party.

Governor Coles, as one of the first acts of his administration, appointed Samuel D. Lockwood secretary of state, this being the only official position he had the right to fill. Thus these two leaders in the anti-slavery cause were brought together and most closely associated in friendship and zeal in a noble cause. They were about the same age, with considerable experience in public affairs, both unmarried, and at liberty to give their undivided attention to the great interests at stake.

So now the two great parties are well organized and ready for the conflict. The first battle is to be in the general assembly, where the preliminary steps for a convention must be taken. The members of this body have just been elected, and the convention men are confident that they have secured the requisite two-thirds majority in each house. But there are some doubtful members who may be won over by this or that side, and some shaky members who must be supplied with nerve and backbone, and the contestants have abundant scope for the exercise of their powers.

On the meeting of the general assembly it is soon ascertained that the convention party has more than a two-thirds majority in the senate, but to its surprise and present discomfiture, lacks one of the requisite number in the house; but the party is too strong, too full of bitter zeal, and too unscrupulous in its methods to yield the point. An attempt is first made to have the question decided in a joint meeting of the two houses, where a surplus in one house would supply the deficiency in the other, but the words of the constitution are too definite on this point. There must be a two-thirds majority in each house.

The convention party in the extremity resorts to a piece of downright rascality for which no excuse or palliation has been given. A man by the name of Hanson had been elected to the house of representatives in Pike county, but for some reason, now unknown, his claim to the seat was contested by a man named Shaw. Early in the session, Hanson's claim was confirmed, and Shaw gave up the case and went home. It was soon after ascertained that Hanson would not vote in favor of a

convention, and in this he stood firm against all the promises, threats and influences of the convention party. Whereupon, that party decided that Hanson's seat was vacant, and recalled Shaw and placed him in it. This gave the party the requisite two-thirds majority. Thus the first great victory was won for slavery.

The exultation of the party knew no bounds. Vandalia became the scene of the wildest confusion; evidently the populace was pretty much on that side. The anti-convention men were insulted and abused. Governor Coles and Secretary Lockwood were made the objects of special animosity. Their lives were threatened, and the demand was made that they should resign their offices, which they held against the wishes of a large majority of the people. But the end was not yet, and these violent and lawless measures of the convention men disturbed and alarmed the more conservative of their party, and led to quite a reaction in public sentiment.

There was yet another battle to be fought, and there was ample time to prepare for it. The last appeal must be to the people, and the question be decided by a popular vote on the simple issue, convention or no convention. Could this vote be taken at once, there could be no doubt as to the result. The slave power would be triumphant, but the vote cannot be taken until the next general election, which will not be till August, 1824, nearly eighteen months in the future. Here is time and opportunity for work. What may not be accomplished in that interval? It is a grand crisis. The issue between slavery and freedom could not be more sharply set. The soul not stirred by it must be sluggish indeed. Each party girds itself for the conflict. Speedy, persistent, continuous effort is the watchword for the time. At first, the advantage seems to be altogether on the side of the convention party. It includes most of the wealth, social and political influence, and official patronage in the state, and is strengthened by almost all the outside sympathy, as our social and commercial relations are almost solely with the south. Funds are needed for honorable campaign purposes. Convention members in the general assembly by resolution tax themselves, and try to force collection. Each anti-convention member

voluntarily contributes fifty dollars to the cause. Governor Coles comes forward nobly and consecrates his whole four years' salary, $4,000, to the work. Mr. Lockwood resigns his position as secretary of state, with its meager fees, and accepts the office of receiver of public moneys and devotes the surplus income to the grand enterprise. Many others respond with equal liberality. Organization is needed. The convention men form secret clubs, with passwords and private signals. The anti-convention men organize societies, and hold public meetings with one avowed purpose—Illinois for freedom. The influence of the press must be secured.

There are several papers in the state. The "Illinois Intelligencer" at Vandalia, the "Illinois Republican" at Edwardsville, and the "Republican Advocate" at Kaskaskia are under the control of pro-slavery men, and are the organs of that party. A few of the anti-convention men secure the "Spectator" at Edwardsville, with Hooper Warren as editor, and Samuel D. Lockwood, Wm. H. Brown and Thomas Lippincott as financial managers. Others soon after start the "Illinois Gazette" at Shawneetown, under the management of Henry Eddy, and later on in the campaign, David Blackwell buys out the "Illinois Intelligencer," and then ably conducts it in opposition to the convention scheme.

The country is flooded with pamphlets, circulars and handbills, appealing to the people on every phase of the question. The public speaker of course has his place, and eloquent appeals are made from platform and pulpit, from stump and rostrum.

The names of the leaders and distinguished actors cannot here be given. The division was not along sectional lines. The strongest man on the side of freedom was the Virginian, Gov. Coles; and one of the most influential men on the other side was Elisha Kent Kane, of New York, a northern man with southern principles, soon to be rewarded with a seat in the United States Senate, and his name given to posterity in our county nomenclature. In one important particular the anti-convention party had the advantage. It was a thoroughly united party, controlled by men of strong convictions in full sympathy with each other. The leaders of the other party were politicians,

with personal political aspirations, envious and distrustful of each other, and not unfrequently estranged by personal animosities. Thus for a year and a half the conflict waged, always earnest, at times fierce and bitter. Gov. Reynolds, an active convention man, and well acquainted with all the men and measures of both parties, thus sums up the case: "The convention question gave rise to two years of the most furious and boisterous excitement and contest that ever was visited on Illinois. Men, women and children entered the arena of party warfare and strife, and the families and neighborhoods were so divided and furious and bitter against one another, that it seemed a regular civil war might be the result. The leaders of the convention party were Gov. Bond, Kane, McLean, Judge Philips, A. P. Field, Joseph A. Beaird, Robison, Smith, Kinney, West, R. M. Young and others. The opposition was headed by Gov. Coles, Rev. J. M. Peck, Judge Lockwood, Daniel P. Cook, Judge Pope, Gov. Edwards, Morris Birkbeck, David Blackwell, Hooper Warren, Henry Eddy, Geo. Forquer, Geo. Churchill and others.

"I believe the most influential and energetic public men were on the side of the convention, but the opposition was better organized and trained in the cause. The facts and arguments were the strongest on the merits of the subject in opposition to slavery, which had its effect in such long discussions before the election. The *question*, as it was familiarly called at the time, united the various denominations of religion which had never before acted together. The opposition to the convention labored with more enthusiasm and devotedness to the cause than the other side, and organized better and sooner. The opposition succeeded by 1,800 votes majority, and thus ended the most important and the most excited election that was ever witnessed in the state."

The full vote stood 4,972 for the convention, and 6,640 against the convention, showing that each party brought out its full strength.

The victory thus nobly won was not for Illinois alone. In Indiana there were the same influences at work to make that a slave state, and both parties there watched with intense interest

the conflict in Illinois, and had the slave power succeeded in Illinois, it would undoubtedly have done so in Indiana.

The Edwardsville "Spectator," of August 10, thus announces the victory: "'Tis done! The long agony is over! and Illinois still reposes in the arms of legitimate freedom.

"The returns of the election, though but partially received, show that the friends of freedom have triumphed by a decisive and overwhelming majority over the friends of slavery—the disturbers of the peace of the state, and conspirators against the tranquillity and harmony of the Union.

"Upon this event, so auspicious to our future prosperity and happiness, every true lover of his country will rejoice. The religious and moral part of the community who have buffeted the storm, may congratulate themselves upon the consummation and happy termination of their benevolent labors; and they will consider themselves as amply compensated for the personal violence and scurrilous ravings which they have experienced from the pimps of an aristocratic junto."

The noise of the conflict has long since died away, and the actors in it all rest from their labors, but a grateful people should always remember that freedom in Illinois was secured, not by the ordinance of 1787, but by the persistent energy, the noble faith, and heroic enthusiasm of our honored fathers of the present century.

CHAPTER XII.

THE CONSTITUTIONAL CONVENTION OF 1847.

THE reorganization of the judiciary did not prove satisfactory, even to the men who had forced the measure through the general assembly. Judges Ford and Douglas soon resigned. There was danger of a political squabble over every new appointment. The Democrats had secured a majority of the judges, but the obnoxious features of the old constitution still remained. There seemed to be a general demand for a convention to alter and amend the old constitution. The Democratic leaders and papers earnestly advocated this measure, as they were confident of such a majority in the convention as would enable them to frame a constitution to suit themselves. The Whigs did not oppose the measure, as they hoped some things would be made better, and certainly matters could not be made worse. Thus, the call for a convention was carried by a very large majority. The special election for delegates to this convention was fixed for the third Monday of April, 1847, which convention was to meet in Springfield on the first Monday in June following. As a general thing, the election was conducted on strict party lines, but to this was one noteworthy exception. Morgan county was entitled to four delegates, and Judge Lockwood's standing among his friends and neighbors, irrespective of party, connected with his eminent fitness for the position, first suggested his nomination by a popular convention, and finally resulted in a joint convention of both parties, with the agreement that each party should name two of the delegates, and thus all four receive the full vote of both parties. It was a plan well worthy of imitation. Judge Lockwood and his associates, Wm. Thomas, James Dunlap and Newton Cloud, took their seats in the constitutional convention committed to no party platform, and backed by the whole vote of Morgan

county. These facts gave them a pre-eminent position. Newton Cloud was elected presiding officer of the convention, and the others assigned prominent positions. Judge Lockwood's long residence in the state, familiarity with all its institutions, and eminent official service in various departments, made him, perhaps, the most influential man in the convention in all matters which were not made strictly party issues. He was not in favor of an election of the judges by the people, or of the limited term of office, but the majority against him was too large and too decided for any opposition. The minutes of the convention give no fair representation of Judge Lockwood's work or influence in it. He made no speeches, took little part in debates, and his constant practice was to request others to offer resolutions drawn up by himself with great care. He was chairman of the committee on the executive department, and that branch of the new constitution may be regarded as his work. In the article on lieutenant governor, a recurrence of the "Hubbard-Coles" controversy was rendered impossible, by limiting the time in which the lieutenant governor could hold the office of governor.

There were two things, which the Whigs in the convention were especially anxious to accomplish. First, to limit the right of suffrage to citizenship; the other, the adoption of some article in the constitution that would save the state from the disgrace of repudiation. The old constitution gave the right of suffrage, with some restrictions, to every white male *inhabitant*, placing aliens and native born-citizens on the same footing. We have seen that it was an apprehension that the supreme court would in some way limit this right of suffrage, that led to the reorganization of the judiciary of the state. Now, the controversy was transferred to the convention, where each party could freely show its hand, and make an honorable fight. Practically, the contest was over a single word, the substitution of *citizen* for inhabitant. Contrary to general expectation, the Whig party won the victory. The right of suffrage was limited to native-born and naturalized citizens. This was the first defeat of the Democratic party in our state history. The second point referred to, related to the payment of the state

indebtedness. By a course of very unwise legislation the state had been burdened with a large debt, on which, for several years, it had been unable to pay the interest. This was a time of general financial embarassment. Governor Ford says: "There was not gold and silver enough in the state to pay one year's interest on its indebtedness." Moreover, the money borrowed had been foolishly squandered in wild schemes of internal improvement, of really no benefit. Under these circumstances, the state had not only repudiated its debt, by failing to provide for its interest, but there had grown up in the state quite a large party in favor of open repudiation of the whole debt, to the disgrace of the state and the ruin of its credit.

There were many wise and good men in the convention who realized that this great question must be met and settled here. The following article was introduced into the constitution: "There shall be annually assessed and collected a tax of two mills upon each dollar's worth of taxable property to be applied as follows, to wit: The fund so created shall be kept separate, and shall annually, on the first day of January, be apportioned and paid over *pro rata* upon all such state indebtedness, other than the canal and school indebtedness, as may, for that purpose, be presented by the holders of the same, to be entered as credits upon, and, to that extent, in extinguishment of the principal of that indebtedness."

The controversy over this question was not on strict party lines. The Whigs, however, were with scarcely an exception, in favor of it, and it was finally adopted against a strong opposition, and only with the proviso that this article of the constitution shall by itself be submitted to a vote of the people, and this popular vote may be taken as indicating the feeling of the people on this matter. It stood 41,017 in favor of the provision, to 30,586 against it. This action of the convention, thus ratified by the popular vote, proved the redemption of the state. Repudiation was itself repudiated, and the credit of the state established on such a basis that it could not be shaken. To this measure Judge Lockwood gave his most earnest, untiring support. The idea of repudiation was a shock to his keen sense of honor and integrity, and his efforts were in the most efficient direction; that

was, by personal influence to secure the votes of many who seemed doubtful and undecided. When we consider his high standing in all parties, the confidence he had won among all classes, and his earnest appreciation of the condition of things, we may know that his influence was great, but the state may never know how much it was indebted to him. The minutes of the convention show Judge Lockwood's connection with several other articles of the constitution. Those relating to gambling, and prohibiting lotteries, and the sale of lottery tickets, originated with him; also the one relating to land sold for taxes, with reference to which we here quote from Stuvé and Davidson: "Regarding tax titles, the law of 1839 was one of peculiar hardship, rendering their defeasance most difficult by throwing the *onus probandi* as to any irregularity in the manner of acquring them upon the real owners of the land. A deed was *prima facie* evidence that the land was subject to taxation; that the taxes were unpaid; that the lands were unredeemed; that it had been legally advertised; that it was sold for taxes; that the grantee was the purchaser; and that the sale was conducted in the manner required by law. It was possible for a man to lose title to his land, although residing on it and having paid the taxes. All this was radically changed by section 4, article 9, of the new constitution, introduced by Judge Lockwood, the requirements of which the courts have construed strictly, and it may well be inferred that since then, not many tax titles have stood this ordeal of the organic law."

This review of the convention would not be complete without reference to one feature of the new constitution, which is worthy of special notice. The Christian sentiment of the country has for years grieved over the fact that there is no mention of God in our national constitution; that in the fundamental law of the land there is no recognition of the Supreme Lawgiver of the universe; no acknowledgment of dependence upon Him who guides in the affairs of men and nations. We are accustomed to regard our fathers as a generation of devout, God-fearing men, and can account for this omission only on the ground of inadvertent oversight. In the first constitution of our state there is the same omission, but not, however, to be explained in the same

way. The matter was brought directly to the attention of the convention of 1818 by a petition from a religious sect called Covenanters, asking for some recognition of God and the Christian religion in the state constitution. The petition was disregarded, and the Covenanters refused to take part in any elections, or hold any office under the new government. This resolution they adhered to until the slavery conflict of 1824, when the sect gave its solid vote for freedom. In the new constitution there would have been the same omission, but for the interposition of one man. The minutes of the convention show no reference to the subject until near the close of its session, when we find the following action: "On motion of Mr. Thomas, the preamble was amended by substituting for it the following: 'We, the people of the state of Illinois, grateful to Almighty God for the civil, political and religious liberty which He has so long permitted us to enjoy, and looking to him for a blessing upon our endeavors to secure and transmit the same, unimpaired, to succeeding generations, in order to form a more perfect government, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and to secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the state of Illinois.'"

This was Judge William Thomas of Jacksonville, and he has repeatedly, and in various ways, publicly stated that this amendment did not originate with him; that he simply in his place, as chairman of the committee on final revision, offered this resolution at the request of Judge Lockwood. In a letter to the writer under date of January 1, 1886, he gives the following particulars: "A few days before final adjournment of the Illinois Constitutional Convention of 1847, Judge Lockwood, one of the delegates from the county of Morgan, called on me, saying he had been engaged preparing an additional section to be adopted as a part of the constitution, and he desired my assistance in securing its adoption. Then referring to the dissatisfaction felt by various Christian sects with the old constitution, because there was no recognition of God in it, he requested me to offer at the proper time, the following amendment to the preamble of the constitution." (Here follows the amendment as

given above.) And Judge Thomas adds: "On the morning before the convention adjourned, I moved for leave to offer an additional section, to which, I said, I know there will be no objection; leave was given, and I read the section and put the question of adoption, and it was adopted without a dissenting voice."

Judge Edward P. Kirby, of Jacksonville, thus writes to Judge Thomas in reference to this matter: "I have looked over your reminiscences of Judge Lockwood's preamble to the constitution of 1848, and think it ought certainly to be published. I have often admired both its spirit and mode of expression, but never knew before who was its author."

CHAPTER XIII.

RETIREMENT FROM OFFICE.

UNDER the new constitution the terms of office for the judges expired the first Monday of December, 1848, and on that day, Judge Lockwood retired from the position he had filled with so much honor to himself and the state for twenty-four years. He had been urgently solicited by prominent men in the Whig party, and many others, to allow his name to be used as a candidate for one of the judgeships under the new organization, but he firmly declined all such proffered honors. He knew the contest would be a party one, carried on with a good deal of partisan feeling. He was constitutionally averse to everything of that kind. He had steadily opposed this election of judges by the popular vote, and aside from the seeming inconsistency of taking office under a system he had on all occasions opposed, he knew this fact would be used against him and the party with which he was affiliated. There was, moreover, another reason of a private nature, perhaps stronger than all the others. He had for years given his whole time to his official duties, on a meager salary, which with strict economy barely covered current expenses, and the necessities of his family now demanded that he should give his attention to his own pecuniary affairs. The salaries under the new organization were no improvement on the old, and were unchangeably fixed while that constitution remained in force. This attempt at economy led to a system of official corruption in all branches of the government which forms a dark picture in our state history. Judge Lockwood, with many others, had opposed these measures in the convention, foreseeing some of the evils that would result, but the mania for economy was irresistible.

On retiring from the bench Judge Lockwood received from every circuit where he had held courts, letters of appreciation and regret, of which we here give a few samples.

Hon. Sam'l D. Lockwood:

Dear Sir,—As you are about to retire from the bench, we can not feel satisfied to let the occasion pass, without expressing the cordial sentiments of regard, which we entertain toward you, in consideration of the intelligent, impartial and satisfactory manner in which you have discharged your arduous duties. And in doing this, we express the uniform sentiment of the county of Scott; if there be individual exceptions, it is on the part of those whose good opinion can not be gained by virtuous action.

Those of us who are members of the Bar owe you a thousand acknowledgements for the kind manner in which, in the infancy of our practice, you extended to us the hand of assistance, and helped us along the path so rugged to the young practitioner at the Bar. For this we thank you. Our best wishes will attend you through life.

We take this private method of addressing you as we presume it will be more grateful to your feelings than any public demonstration. Respectfully and gratefully yours,

N. M. Knapp.
J. H. Berry.
L. Harlan.
B. Edmonson.
E. B. Kirby.
H. Case.

Winchester, Oct. 7, 1848.

State of Illinois } Circuit Court.
County of Jersey, }

September Term, 1848.

At a meeting of the Bar and officers of the court, held upon the 13th day of September, of the present term, A. W. Cavarly, Chairman, stated the object of the meeting to be, to unite in some demonstration of respect to the Hon. Samuel D. Lockwood, the present judge of the court, whose term of office was about to expire; whereupon the following preamble and resolutions were passed unanimously:

"*Whereas*, The Honorable Samuel D. Lockwood will shortly retire from the station which he has so long and eminently adorned; therefore

"Resolved, That the members of the Bar cannot let the occasion pass without expressing their profound respect for the purity of his life, and their admiration for his distinguished learning and talents as a jurist.

"Resolved, That in the contemplated retirement of Judge Lockwood from the public service we will take leave of him with unfeigned regret. The uniform courtesy and urbanity which have ever characterized his intercourse with the Bar and the people, his learning, dignity, impartiality and strict honesty as a judge, have endeared him to us all; and in bidding him farewell, we tender to him the ardent wishes of our hearts, that his future days to a good old age may be unclouded and serene.

"Resolved, That whilst the memory of the pleasant intercourse betwixt Judge Lockwood and the Bar of the Circuit Court must, in a great measure, pass away with the lives of its members, we rejoice that opinions delivered by Judge Lockwood as a justice of the Supreme Court, of which he has long been a distinguished member, constitute a monument to his ability and learning as a judge, upon which the Bar of Illinois will ever look with respect and admiration.

"Resolved, That these proceedings be signed by the chairman and secretary, and a copy of the same be presented to Judge Lockwood, and a like copy to the court, with a request that they be spread upon the record, and that they be published in the different newspapers of the Circuit."

A. W. Cavarly, *Chairman.*

W. K. Titcomb, *Sec'y.*

At a meeting of the Members of the Bar practicing in the Menard Circuit Court, held at the Court House in Petersburg, on Wednesday, Oct. 25, 1848, A. Lincoln was called to the chair. Thomas L. Harris, Richard Yates and John T. Stuart were appointed a committee to draft and report resolutions expressive of the sense entertained by the Bar, of the character and services of His Honor, Samuel D. Lockwood, the presiding Judge of this Court, and the following preamble and resolutions were reported by them and unanimously adopted.

"*Whereas*, The members of the Illinois Bar practicing in the Menard Circuit Court, have become apprised that the Hon.

Samuel D. Lockwood, the presiding Judge in said Court, is about to retire from the bench, which he has graced and adorned for nearly a quarter of a century; and being anxious of giving expression to the sentiments which they entertain of his character and eminent judicial services, therefore

"RESOLVED, That it is no vain adulation when we declare that, in the Honorable Samuel D. Lockwood, we have a citizen of distinguished talents, who has rendered important service to the public, as Attorney General, as a Judge of the Supreme and Circuit Courts, and as a member of the convention that formed the present constitution of the State of Illinois.

"RESOLVED, That the judicial bearing and ability with which the course of His Honor, Judge Lockwood, has been marked, which characterize his decisions upon the circuit, and which stand out as ornaments, on the pages of our reports, no less than his urbanity and kindness to the Bar, and the virtues and integrity of his private life, entitle him to our highest deference and regard.

"RESOLVED, That His Honor Samuel D. Lockwood, have our best wishes for his health and happiness, and hope that he will live many years to witness the growth and prosperity of our noble state, for which he has labored so long and faithfully.

"RESOLVED, That a copy of the proceedings of this meeting, signed by the chairman and secretaries, be forwarded to His Honor, Judge Lockwood."

Other communications to the same purport might be added, but these are sufficient to show in what esteem he was held by the bench and bar of the state.

This is the proper place to refer to one other effort made by Judge Lockwood's friends to secure for him a judicial appointment. In 1850 Nathaniel Pope died, thus leaving vacant the federal judgeship, which he had filled since the organization of the state. This was under President Taylor's administration, and it was certain that the vacancy would be filled by the appointment of a Whig. Judge Lockwood's qualifications and eminent fitness for the office at once suggested his name. But he did not receive the appointment, for reasons which are made apparent from the following quotations from various letters addressed to him at the time.

SPRINGFIELD, January 22, 1850.

JUDGE LOCKWOOD:

Dear Sir,—You will receive a telegraphic despatch in the morning advising you of the death of Judge Pope, and of my taking steps to place your name before the President to be appointed judge. I have telegraphed W. H. Brown of Chicago, have written to Mr. Underwood of Kentucky, and Douglas of the senate, Judge McLean, and to Williams of Quincy. The news reached here since dark, and I can not see any of the lawyers of this place. What they will say I do not know. I will write Woodson and Col. Ross and ask them to have recommendations signed and forwarded to me.

I know not what you will say to this procedure, but if you decline having your name used in the matter, no harm will result from what I do. Your friend,

WM. THOMAS.

CARROLTON, Jan'y 25, 1850.

HON. SAM'L D. LOCKWOOD:

Dear Sir,—Having seen it stated in the papers that Judge Pope is dead, I write to you to ask if it would be agreeable to your feelings and suit your convenience to receive the appointment to fill the vacancy. It would afford me much pleasure to render you any service in the matter. Your numerous friends here, with one accord, agree in desiring that you might fill the office. I do not know in what way I can best aid you in the matter, but rely on me in whatever mode you may suggest. Please let me hear from you.

Sincerely yours, etc.,

D. M. WOODSON.

CHICAGO, Jan. 25, 1850.

DEAR LOCKWOOD:

Day before yesterday I rec'd Wm. Thomas's despatch announcing the death of Judge Pope. * * *

I have since been at work and secured for you the Chicago strength, viz.: Scammon, Morris, G. Goodrich and others. I have written to Seward, and I will write to J. A. Rockwell and Major Hunter.

Scammon wanted the office, but would not move in opposition to you. He says you will obtain the appointment.

Truly yours,

W. H. Brown.

Washington, Jan'y 23, 1850.

My Dear Sir:

I have heard with extreme regret of the death of our esteemed friend, Judge Pope. I have never felt deeper sorrow at the death of any man who was not connected with me by the ties of blood.

I received a despatch from Judge Thomas stating that you would be recommended as his successor, and requesting that Gen. Shields and myself would not commit ourselves upon the subject until it should be received.

I do not know that I can exercise any influence in the choice of a successor, but I think it is a cause in which I have a right to be heard, as the appointment is not a political one and is not limited in its duration to the term of this administration. I have determined upon presenting your name for the appointment, and Gen. Shields and Col. Bissell do not hesitate to indorse this opinion in your favor. I have not seen the other members of our delegation since the sad news arrived, but will see them in the morning. I have seen the Hon. Reverdy Johnson (Attorney General), and find that he is familiar with your opinions and your reputation as a judge, and he did not hesitate to express his preference for your appointment, and said that he should urge it upon the Cabinet.

I have thought it was due to say this much to you. I will advise you farther upon the subject soon.

I have the honor to remain,

Very truly your friend,

S. A. Douglas.

Hon. Samuel D. Lockwood.

Washington, Feb'y 4, 1850.

My Dear Sir:

You have doubtless heard by telegraph of the appointment of Mr. Drummond, of Galena, to the vacant judgeship. I need not say to you that I am mortified and disappointed at the result. Col.

Baker claims the entire credit of the appointment, and I presume he is entitled to it. Mr. Butterfield recommended Joseph Gillespie of Madison County, while Gen. Shields, Col. Bissell, Col. Richardson, Major Harris and myself were for you. I had seen two members of the Cabinet upon the subject, and Judge Underwood of Kentucky saw the President in your behalf, when we were told that no appointment would be made until there was time to hear from all parts of our state. Under this opinion we rested satisfied until to our surprise a nomination was sent to the senate without the slightest intimation that the name of Mr. Drummond was spoken of for the place. We will have action on the nomination postponed to give time to hear from home, but I presume it will eventually be confirmed. I must adhere to my opinion that if time had been given for a fair expression of public opinion that you would have received the appointment.

I have the honor to be,

Very respectfully your friend,

S. A. Douglas.

Hon. S. D. Lockwood.

Judge Lockwood did not take any active part in the effort to secure the vacant judgeship. Many things connected with it were distasteful to him, especially the haste and importunity deemed necessary to secure a favorable result.

CHAPTER XIV.

ILLINOIS CENTRAL RAILROAD.

JUDGE LOCKWOOD was not allowed to remain long in retirement, as his services were soon needed in a new position of great responsibility and trust.

In September, 1850, the United States made to the state of Illinois a magnificent grant of lands, nearly 3,000,000 acres, to secure the construction of the Illinois Central Railroad, and in the following spring the general assembly accepted the grant with the conditions thereto attached, and in furtherance of the grand scheme passed an act incorporating the Illinois Central Railroad Company. Fortunately for all parties interested, this company was composed of men in New York and Boston, of well established reputation in financial and railroad enterprises, whose names were a guarantee of success. There was great danger that the magnificent grant might be squandered in fruitless undertakings under the management of corrupt politicians and visionary speculators. The whole matter was in the hands of the general assembly, a body which had heretofore been largely controlled for partisan purposes by ambitious and avaricious political leaders. Such men saw in this new enterprise a grand opening for patronage and plunder. There seemed to be a pretty general understanding that the state would take upon itself the management of the whole business, in all its details, and of course there would be a vast number of lucrative offices to be filled, and rich contracts to be let. These things brought to the seat of government a crowd of hungry aspirants for honors and emoluments. The state, however, was not a stranger to such enterprises, and its sad experience, in such schemes of internal improvement, with its heavy burden of debt and threatened bankruptcy, proved in this crisis a most beneficial teacher. Wise and prudent counsel prevailed in the

general assembly, as evinced in the act of incorporation before referred to, and under which the enterprise was perfected with most beneficial results, not only to the state and railroad company, but to the whole country.

There was a good deal of hard fighting over several important questions. All the rights of the state must be secured, and a speedy construction of the road was demanded on all sides, and in some way the lands must be made available as security for raising the necessary funds. The railroad company was ready to grant all needed concessions to secure the state in all its interests, but it positively insisted that it should have entire control of its own business affairs, should appoint its own officers and control its own operations.

To secure the rights of all parties, the following plan was adopted: The state would convey in fee to the railroad company, the lands granted by the United States, and the company should at the same time convey all these lands, and all their other property, in trust to three trustees to be held by them, —first, to secure the state in all its interests; second, to secure the payment of bonds issued by them to procure the funds needed for the construction of the road, and third, to protect the rights of all other parties interested. The success of the plan depended upon the selection of trustees of such established standing and reputation as would inspire confidence at home and abroad. Over the appointment of these trustees there was much controversy. What the assembly would have done if left to itself can not be known; but the representatives of the company to be incorporated insisted that the trustees should be named in the act, and that the company should select one of the three. These points being granted, the controversy was narrowed down to the selection of the two remaining trustees. The democratic party had a majority in both branches of the general assembly, and a strong partisan feeling was manifested; not strong enough, however, to overcome the influence of wiser and better men, who insisted that the matter must be taken out of politics, and men selected in every way worthy of trust. This principle was accepted with the general understanding that Judge Lockwood would receive one of the appointments, and

John Moore, late state treasurer, the other. The representatives of the railroad company named Morris Ketchum, of New York, and these three names were inserted in the act of incorporation. Thus all differences were harmonized, and the enterprise started on a basis that insured its success.

As the land department of the railroad company was located at Chicago, it became necessary for one of the trustees to reside at, or near that city. As neither of the other trustees could do this, Judge Lockwood accepted the position, and in the spring of 1853 removed to Batavia, a village on Fox river, thirty-six miles west of the city, and from that time till his death, gave his care and attention to the details of the trusteeship.

He was in many respects, practically, the sole trustee. The other trustees signed deeds of conveyance, and other papers of great importance to be filled out under Judge Lockwood's inspection, and rendered complete under his signature. Under carefully worded restrictions, the trustees were authorized to sell and convey to actual purchasers these lands from time to time, and to apply the proceeds as directed, and the responsible work of seeing that these restrictions were observed, and conditions strictly complied with, was, so far as the trustees were concerned, left almost entirely to Judge Lockwood.

The Act of Incorporation required as follows: "The lands shall be sold for cash in hand, or the bonds of said company at par. All bonds received on such sales shall be cancelled by said trustees and delivered to said company. The trustees shall invest all money received on such sales in the bonds of the company, which shall be in like manner cancelled and returned. On cancelling said bonds, and before returning them to said company, said trustee shall make a brief memorandum on each bond, specifying for or on what particular tract or tracts of land the same was received." Corresponding entries were also made on the deeds of conveyance, showing how the money received for each tract of land was applied, indicating the particular bond that was thereby in whole, or in part, paid and cancelled. The amount of careful work and inspection required, can be known only to those who are familiar with such business. The clerical work was done by employees of the railroad company, but the

careful inspection of this work devolved upon Judge Lockwood. There was always the most cordial relation between him and the officers of the company.

Mr. P. Daggy was first secretary of the land department, and soon after appointed clerk of the trustees, and in 1871 was made land commissioner, which position he now holds, and he gives in the following letter his impressions of Judge Lockwood:

LAND DEPARTMENT ILLINOIS CENTRAL RAILROAD COMPANY.

CHICAGO, February 26, 1887.

WILLIAM COFFIN, ESQ., Batavia, Ill.

Dear Sir:—It affords me great pleasure to respond to your request of yesterday, to furnish a statement of the connection of the Hon. Samuel D. Lockwood with the Illinois Central Railroad, as one of its highly respected trustees. On the 17th of December, 1855, I became connected with the land department of this road, and in less than thirty days afterwards Judge Lockwood, with the Hon. John Moore, one of his co-trustees, paid the office an official visit. They both received the prompt attention of the officers and employees then engaged in this department. I was most favorably impressed with the appearance and gentlemanly conduct of Judge Lockwood, and took especial pains to show him the various details of the business of the office. He expressed himself as highly gratified for the information given him, and in fact stated that he had received more information in that one day than he had been able to obtain in a whole year previously. He informed me that he had partially arranged to remove to Chicago, and take charge of the land department in person. But after our full examination of the affairs of the department he was so well pleased that he abandoned the idea of leaving Batavia. This of course established between us the most confidential relations, which continued to the day of his death.

He paid this department an official visit regularly once each month, to sign deeds, up to within a few months of his death, during which time, I was informed, he was confined to his house. For several months at first, he preferred to compare all deeds with the contracts and records, before signing them. But we had taken the precaution to compare them carefully before his arrival, so that he never discovered any of our errors. Hence he

remarked that we had the faculty of hiding our mistakes so carefully that he thought it was labor lost for him to make any further comparisons; but jocularly observed that he would hold me individually responsible for all errors.

When we first became acquainted, in January, 1856, Judge Lockwood, who was then quite an old gentleman, was remarkably sprightly and active. And he seemed to continue so for a number of years. But some few years before his death, he commenced gradually failing in strength. So much so, that after signing from fifty to one hundred deeds he would recline upon a sofa and rest, then arise and sign as many more, take another rest, and so on until all were signed.

Although his physical strength failed quite perceptibly, his mind seemed to remain quite clear, up to his very last visit. Without the slightest intention to flattery, I honestly think he was the most conscientiously honest and upright gentleman with whom I ever had the pleasure of an acquaintance. And if he had any faults, I must say the same as he said about my errors: he had the faculty of hiding them so carefully that no one ever perceived them. Our official and social relations continued for nearly eighteen years, and not one unkind word ever passed between us. There was no complaint or fault-finding of any kind, or character whatever. He was just as affable and kind to our messenger boy or the humblest clerk we had, as he was to the President of the road. He treated every one as one gentleman should treat another, and every one connected with this department loved and respected him, the same as a father.

I respectfully subscribe myself

Your friend and obedient servant,

P. Daggy, *Land Commissioner.*

It was a great satisfaction to Judge Lockwood in the last years of his life, that he had lived to see the conditions of this trust fully maintained. The road had been built and fully equipped according to stipulation, and the state and nation were receiving rich benefits from it. The original bonds issued by the trustees were already largely taken up and cancelled, and there were funds on hand to meet the few outstanding, and for all parties interested the enterprise had proved a grand success.

CHAPTER XV.

JUDGE LOCKWOOD IN CONNECTION WITH THE EDUCATIONAL AND CHARITABLE INSTITUTIONS OF THE STATE.

ESTIMATED by the importance and the beneficial results to the people of the state, this should be the longest and most interesting chapter in this sketch, but unfortunately the details of such work are not matters of history, and the result can only be indicated by general statements.

In the first ten years of our state history, if we may judge from the public records, very little attention was given to educational or charitable institutions. A large majority of the people was decidedly opposed, both to free schools and endowed institutions of learning. The general government had, by generous grants of land, provided for the establishment of both of these; but, strange as it may seem, the people were unwilling to accept or improve the offered benefit. Three per cent. of the income from the sale of lands was given to the state for educational purposes; but the general assembly loaned these funds to the state to meet general expenses, or to be squandered in wild schemes of internal improvement. One section of land in every township was set apart for the support of common schools, but with very few exceptions these lands were sold at a very low price, and the funds used up in a very few years. People seemed to be more afraid of taxes than anything else, and every proposition for the establishment of a free school system, which involved taxation, was at once voted down as a Yankee enterprise. At one time for a very brief period a better spirit prevailed. The vigorous effort to secure the state from slavery, and the grand success of that effort, was an inspiration to good men, and bore good fruit in other directions.

The next general assembly was to a considerable extent controlled by anti-slavery men, and Yankee ideas were, for the hour,

ascendant. As we have seen, the judiciary was established on a liberal basis, which gave the supreme judges time to introduce necessary reforms in legal practice.

Wise measures were passed for the improvement of the public highways, and a public school system was adopted, which seemed to indicate a wonderful advance in public sentiment. Gov. Coles had, in his message, earnestly recommended such action, and Joseph Duncan, afterwards governor, secured for himself a high reputation, sustained through subsequent years of faithful public service, by the introduction of the bill establishing this school system, and by a speech of remarkable force and eloquence in its support. These measures, however, were in advance of the times, and a decided reaction was shown at the next election.

The general assembly elected in 1826 has the reputation of being the worst ever assembled at the state capitol. It repealed or rendered inoperative all the good work of its predecessor. Thus, by the provision that no person should be taxed for the support of public schools without his written consent, all life was taken out of the school system, and it remained a corpse till 1855, when our present efficient school law was enacted, which was in fact but little more than a re-enactment of the Duncan Bill of 1825.

With the public sentiment against common schools it was, of course, useless to attempt any legislation in favor of higher institutions. From these statements, however, it must not be inferred that the cause of education was wholly neglected. A great deal was done in the way of local schools and private academies, and there were men who contributed liberally to these who would not consent to be *taxed* a single dollar for the same cause. There were many eminent men in the state who labored earnestly to secure the establishment of an academy of high grade which might develop into a college or university. Such men as Governors Coles and Edwards, Judges Pope and Lockwood, Messrs. Thos. Mather, Dennis Rockwell, Dr. John Todd, Thos. Lippincott, and Rev. J. M. Ellis, one of the first home missionaries sent to Illinois, were persistent in their efforts in this direction. The Presbytery of St. Louis, then including Missouri and Illinois, under the leadership of Rev. Salmon Giddings, the first pastor of

the First Presbyterian Church of St. Louis, took early action in this matter, and would have succeeded in the establishment of such an institution had not a few men insisted that the institution should be located in St. Louis, while it was admitted that its support must come largely from Illinois; and in subsequent years this inability to agree on a location stood in the way of all efficient action. In all these transactions Judge Lockwood took a prominent part, and his influence finally secured harmony of action, which resulted in the establishment of the first college in the state.

The plan adopted was to organize a board of trustees empowered to raise funds for the endowment of a college, to be located wherever said trustees should determine. It was understood from the outset that Judge Lockwood would be president of this board, and the general confidence reposed in him conduced as much as anything else to the success of the plan. Liberal pledges were secured, some unconditional, and some, as to amounts, conditioned on the location of the institution.

The original document, drawn up by Judge Lockwood and the Rev. J. M. Ellis, is here given as an interesting item in our state history, not found in any published records.

OUTLINE OF A PLAN FOR THE INSTITUTION OF A SEMINARY IN THE STATE OF ILLINOIS.

The property of the Seminary, procured by contribution, subscription, or otherwise, shall be divided into shares of ten dollars each. Each subscriber or contributor to the amount of ten dollars, shall be a Stockholder; and the shares shall be transferable under such regulations as shall be adopted by the Trustees or Stockholders. Each share in the stock shall entitle its possessor to vote for Trustees. Voting by proxy shall be permitted under suitable regulations. The Trustees shall have the location and direction of the Seminary, and the selection of Professors or Instructors, except in the case hereinafter specified. —The foregoing outline may be filled up, and the plan brought more into detail; but the principles may not be varied.

Plan of Education.

First. An English Department; in which young men shall receive an education preparatory to the various duties and

business of active life. Whenever the intended pursuit of the scholar is known, special regard will be had to that object. In this department the English Language will receive particular attention;—Reading, Writing, Composition, and Public Speaking; with Geography and History, especially that of our own country. Political Economy shall be taught, so far at least as to exhibit the outlines of the science of Government, and to make the student familiar with the principles and blessings of free Institutions; and of the American Constitution in particular.

Second. The second Department, in which the Ancient Classics and higher branches of Education will be taught, shall be formed after the model of the Academies and Colleges in our country; so as to prepare students to be received into any of the Colleges of the United States. This will of itself be the best pledge that can be given, both at home and abroad, that the instruction is conducted on the most approved and liberal system. And as the Institution rises, from year to year, the students shall be fitted for admission to advanced standing in any of those Colleges, *i. e.* into the second, third, or fourth class; or, if they choose to remain longer, they shall be conducted through the whole course of College studies. Every thing will be done to make the Institution worthy the patronage of an enlightened and free people, and to secure the accomplishment of the best wishes of the people, in this rising country, for the education of our youth,—the hope and glory of the land.

A Department for Female Education will also be provided, until a separate Institution shall be furnished. And Young Ladies shall enjoy all its advantages, so far as circumstances may require, viz.: use of the Library, attending Lectures, &c.—in addition to the constant attention of a Governess, in all that pertains to manners, morals, and the improvement of the mind.

Opportunity shall be offered to all who are seeking an education for the Gospel Ministry. But while the benefits of the Institution shall be open to all denominations of Christians, no preference shall be shown to any one to the injury or prejudice of another. Should this Department go into operation, it may be continued in connexion with the Institution, or detached from it, as circumstances may seem to demand; and the Professor or

Instructor will be appointed by the Presbytery of the Presbyterian Church within whose bounds it may be.

Agriculture, and perhaps some branches of Mechanics, will form part of the system of Education—whereby the health of the students will be promoted, and the expenses of tuition diminished.

Measures will be adopted to facilitate the payment for boarding in produce, as far as practicable.

WE, the undersigned, inhabitants of county, severally promise to pay to the Trustees of said Seminary, who may be appointed, or to their Agent, the sums set opposite to our names, respectively, in aid of the Institution above described: payment to be limited and determined in the following manner, that is to say: If the said Seminary shall be located in county, we will pay the sums set down in the first column; if placed in county, we will pay the sums set down in the second column; or if it be placed elsewhere, we will pay the sums set down in the third column—as ruled and written below. Payment to be made by instalments, at a month's notice, as shall be directed by the Trustees.

JANUARY, 1828.

Under this plan, subscription papers were circulated, and such other steps taken, as soon secured the organization of a stock company, and the selection of a board of trustees, which subsequently developed into Illinois College. As stated, Judge Lockwood was chosen President of the Board, which position he held until 1868, when he resigned on account of inability to attend its meetings.

The first question for the trustees to decide was, the location of the institution, and it was generally expected that this would be either in St. Clair or Madison county, and this would have been the case but for the advice and influence of Judge Lockwood. The year before, he had been assigned to the Sangamon circuit, and had held courts in Springfield, Jacksonville, Quincy and other places, always making the circuit on horseback, thus having a fine opportunity to see the country and get acquainted with the people. He had been so favorably impressed with Jacksonville and its vicinity, that he had decided to make that

his home, and for that purpose had purchased eighty acres of land, pronounced by all who have ever seen it, one of the most beautiful spots in Illinois. In considering the question of location of the Seminary, Judge Lockwood insisted that the matter should not be decided until a committee of the trustees had visited Jacksonville and the surrounding country, and he offered to pay the expenses of one of the committee. Rev. J. M. Ellis, and Thomas Lippincott, who was then in business in Edwardsville, but who subsequently entered the ministry and became well known through the state as "Father Lippincott," were selected as such committee. Neither of these men knew anything of the country north of Madison, and both had expressed a decided preference for that county. Judge Lockwood furnished Mr. Lippincott with a horse and necessary funds for traveling expenses, and John Tilson, then a resident of Hillsboro, but who had decided to remove to Quincy, did the same for Mr. Ellis. This committee brought back such a favorable report of Jacksonville, giving such a glowing account of the country, and the class of people that were coming in, that that place was at once fixed upon as the site of the proposed institution.

On this subject, Dennis Rockwell, first postmaster of Jacksonville, writes to Judge Lockwood, under date of March 19, 1828, as follows: "Your letter of the 6th inst., informing me of the meeting of the Presbytery of St. Louis on the 19th (this day), did not reach me until the *17th*; consequently too late for me, or any other person, to go down in time to be present at the meeting.

"From the best information I can obtain, I am of the opinion that $1,000 or more can be raised in this county, in aid of the seminary, if located here. This is the opinion of Mr. Thomas, who has circulated the subscription paper."

To this letter Mr. Thomas, afterward known as Judge Thomas, and still residing in Jacksonville, adds these words: "Mr. Brick" (a Presbyterian minister in Jacksonville), "will attend the Presbytery at St. Louis, and I hope he will be able to inform the good people of the wishes and sentiments of the people in this county, about the seminary, and it is possible that he will induce a belief (very unintentional, too,) that we will do more than

we can upon trial, because his acquaintances are all very anxious upon the subject. We are about to build a big brick court-house, and we expect some aid from voluntary subscription. This may have some effect upon the amount that might be given to the seminary."

After the decision to locate the seminary, subscription papers were circulated, modified to meet the existing condition of things. The institution was to be located within five miles of Jacksonville. The subscriptions were to be paid by installments on a month's notice, after the first day of September, 1828, as shall be directed by the trustees, and the following individuals were named as trustees: S. D. Lockwood, John Leeper, H. G. Taylor, Ero Chandler, Dennis Rockwell, Wm. C. Posey, Enoch C. March, Archibald Job, Nathan Compton, Morgan county; John Allen, Greene county; James McClung, Bond county; John Tillson, Montgomery county; John Todd, Sangamon county; and Wm. Collins, Madison county.

Soon after, the stock arrangement was given up by consent of all parties interested, and the trustees empowered to fill vacancies in their board, and elect successors.

The make-up of this board of trustees, the first of the kind in our state, is worthy of notice. It indicates that this was in no sense a ministerial or Yankee enterprise. There were in the board judges, lawyers, physicians, clerks, postmasters, farmers and merchants; but not one clergyman. All may be said to have been Christian men, as being in sympathy with Christian institutions, and supporters of various Christian churches. Several of them were from New England, but New York, Pennsylvania, Tennessee, Kentucky, Virginia, and perhaps other states were represented. An effort was at once made to secure a charter from the state, but the general assembly would not countenance any such "*Yankee*" enterprise, and for several years the institution had no legal existence, but the subscriptions to it were promptly paid and faithfully invested, the title to the real estate being vested in Samuel D. Lockwood.

Judge Lockwood's good judgment in reference to the location of the seminary, was approved by the trustees much farther than he intended, or was pleasing to him, for they insisted that the

site of the seminary should be the premises he had selected for his own home. Under the date of July 5, 1828, H. G. Taylor, a merchant in Jacksonville, and one of the trustees, writes to Judge Lockwood as follows: "I have made a purchase of the half quarter section of land lying east of yours. My object in the purchase was to secure a site for the seminary. The amount of purchase is $215.00, which sum is rather large for me to spare from my small business. However, nothing shall be done more, until you visit Jacksonville, which visit is anxiously expected by your friends."

Mr. Taylor not being able to retain the land, Judge Lockwood a few months later took it off his hands, to be held for the same purpose. This arrangement was not fully satisfactory to the trustees, who insisted upon having the whole one hundred and sixty acres. Under date of March 23, 1829, Mr. Taylor writes: "A meeting of the trustees of the seminary was had on the 20th inst. We were disappointed by your seat being vacant, a circumstance which we regretted, because the decision of the question concerning the land was to be had." And Mr. Taylor farther states that the trustees feel that it is absolutely necessary for the good of the seminary, and the satisfaction of its friends, that they should have the eighty acres selected by Judge Lockwood for his own home, and he very significantly adds: "There is a considerable solicitude in Jacksonville, lest this determination should cause you to seek a home elsewhere."

Under date of January 19, 1829, Mr. D. Rockwell writes: "I fear your building spot will be spoiled, if the seminary is put upon your land, which seems to be the determination of the trustees here."

Judge Lockwood, with his accustomed liberal spirit, yielded the point, and took another tract of land farther west for his family residence. This took him farther from the village and on the opposite side of the beautiful grove. Here he soon after erected a substantial brick edifice, but occupied it only for a few years, as it was too far removed from churches and schools for the comfort of his family.

The seminary soon received substantial aid from the East, and was established on a firm basis. After much difficulty, a charter

was obtained from the state. All of the original trustees resigned, except Judge Lockwood and William C. Posey, and their places were filled by John P. Wilkinson, of Jacksonville, and Julian M. Sturtevant, Theron Baldwin, John F. Brooks, Mason Grosvenor, Elisha Jenne, William Kirby and Asa Turner, the seven members of the *Illinois Association*, a name taken by seven recent graduates of the Yale Theological Seminary, who had banded together for home missionary and educational work in Illinois. Thus Illinois College was founded. The plan, so far as it related to female education, was modified by the establishment of a distinct and separate institution,—the Jacksonville Female Academy. In this new enterprise Judge Lockwood took a deep interest, contributing liberally for its support, and feeling a fatherly care for it during his whole life.

Our state has done nobly in its institutions for unfortunate citizens—the insane, blind, and deaf and dumb. The first of these institutions were located in Jacksonville, and Judge Lockwood exerted a very strong influence, both as to their establishment and location. The first meeting ever held in the state to consider the condition of the insane, was held in Judge Lockwood's parlor. There Miss Dorothy Dix, a well-known philanthropist, met some of the prominent citizens of Jacksonville by invitation, to talk over this subject, and by her kind, impressive, persuasive manner so influenced her auditors, that they were ready at once to second all her efforts for this unfortunate class. Judge Lockwood, and several others, went with her the next day to Springfield, where the general assembly was in session, and so arranged interviews between Miss Dix and prominent men in the state, that sufficient influence was secured to carry through the assembly the bill establishing the first asylum for the insane. And in substantially the same way, the institutions for the deaf and dumb and blind were secured. For all three of these institutions, Judge Lockwood was appointed one of the trustees, and by re-appointment by successive governors held the position so long as he was able to attend to the duties. His commissions for various positions under state authority, show the autograph signatures of the governors from 1818 to 1864.

CHAPTER XVI.

PERSONAL AND FAMILY REMINISCENCES.

ANY sketch of Judge Lockwood's life, restricted to a consideration of public matters, would be far from complete, for he was a man pre-eminently distinguished for personal and social virtues. There was in him a rare blending of noble characteristics. He was firm but gentle, just but kind, always maintaining a rare dignity of deportment. Repelling undue intimacy, he was affable, sympathetic, and quickly responsive to every friendly advance.

We have seen the heroic stand he took on temperance in the early history of our state, and he maintained and dignified that stand by a life-long adherence to total abstinence. Though holding so many official positions, Judge Lockwood was never in any sense an office-seeker. He had little respect for men of that class. Almost every one of his appointments to office came from the political party with which he was not in sympathy.

Though never in formal connection with any church, Judge Lockwood was a firm believer of evangelical truth, and a liberal supporter of Christian organizations. With him the Bible was a sacred book, the Sabbath and the church sacred institutions. While liberal in his views, he could never tolerate irreverent skepticism, or favor some now current amusements, which he considered dangerous.

In his genial home, sweet in its hospitality, the wine cup, cards and dancing found no place.

While a resident of Auburn, he so identified himself with the religious interests there, that he was appointed one of the trustees of the Presbyterian Church. In 1815 was formed the Cayuga County Bible Society, the first organized in the state, and Judge Lockwood's name appears as one of the originators and directors of that organization. Of the twenty-four first directors of that

society, he was the last survivor. The stand he thus took, as indicated by these incidents, he maintained through life.

Although through most of his life Judge Lockwood was compelled to practice a rigid economy, he did not consider himself excluded from an active participation in every benevolent and philanthropic work. In later years he especially prized his well earned financial prosperity, as it enabled him to be more liberal in his contributions for the welfare of others.

One intimate with Judge Lockwood, through a long course of years, writes on this subject as follows: "While much embarrassed by the meagerness of his salary, and thinking he must resign his judgeship on that account, he was still providing for the support and education of several of his nephews and nieces, taking some of them to his own home for that purpose." So, it seems to me, that no matter how small his salary, his heart always took in all those who were orphans, or poor or homeless, or needed an education. In later years, when he had property, and could have lived in greater style, he preferred to live as plainly as he always had done, that he might have more money to give away. He had strong objections to wearing mourning. He always felt that grief was not shown by the color of one's clothes, nor by the amount of crape worn; that if persons of means who could well afford it, wore mourning, others in less favored circumstances would feel that they must do so, regardless of home necessities.

Judge Lockwood always held in high esteem John Marshall, chief justice of the United States, regarding him as one of the grand men of the nation, second only to Washington in civil service, and he aspired to accomplish for his own state something of the great work which the chief justice had accomplished for the nation. We find among Judge Lockwood's papers the following, in his own handwriting, which it is known he copied for his own use in his judicial life, and which may be regarded as an expression of his own feelings:

"Judge Hale's rules to be observed in the administration of justice, and worthy to be deeply engraved on the mind and heart of every judge.

"1st. That justice be administered uprightly, deliberately, resolutely.

"2d. That I rest not on my own understanding, but implore the direction of God.

"3d. That in the execution of justice, I carefully lay aside my own passions, and not give way to them, however provoked.

"4th. That I be wholly intent on the business I am about.

"5th. That I suffer not myself to be prepossessed with any judgment at all, till all the business and both parties are heard."

Judge Lockwood's urbanity and gentleness resulted in no wise from sentimental weakness. He could, and he did, make the law a terror to evil doers, as the following incident will illustrate: While he was holding circuit courts, a man was brought before him in Greene county indicted for larceny. This man's attorney had assured him of an acquittal, but owing to the strict rulings of the judge, and his clear charge to the jury, he was found guilty and sentenced for a year to the penitentiary. Some years later, the same man was brought up for trial in Jersey county, on a similar indictment, and to the great surprise of his attorney plead guilty, afterwards giving as a reason,—"When I saw that same old gray head on the bench, I knew it would be better for me to trust his mercy, than his justice."

On October 3, 1826, Judge Lockwood married Miss Mary Stith Nash, a lady of great refinement of taste, and rare natural accomplishments. She was the youngest daughter of John Nash, an old time Virginia planter, residing in Prince Edwards county, a staunch Presbyterian, of the old Scotch type. Her mother died when she was but two years of age, and losing her father eight years later, she was at this early period in life left an orphan, dependent for education and training upon older brothers and sisters. In 1822, the whole family emigrated to the new state of Missouri, taking with them their family servants and household effects. Some of these servants, coming a few years later into Mrs. Lockwood's possession by inheritance, were immediately emancipated and their support provided for.

The Nash family made their first western home on the point of land between the Mississippi and the Missouri rivers, thinking here would be the great city of the west. In this they were

disappointed, and very soon made a new purchase some four miles up the Missouri, and on the opposite side. In this home the marriage ceremony took place, as shown by the following certificate:

"I do hereby certify that on the 3d day of October, 1826, I solemnized a marriage between Samuel D. Lockwood, of the state of Illinois, and Mary S. Nash, of the county of St. Louis, and state of Missouri.

"Given under my hand this 9th day of April, 1827.

"Wm. S. Lacey, M. V. D."

Mr. Lacey was a Presbyterian minister of the Missouri Valley District.

Mrs. Lockwood was a devoted Christian woman of ardent piety and active benevolence. Her sweet, winning disposition won the affection of old and young, and gathered around her a wide circle of loving friends. A few words from others will show the esteem in which she was held.

Mrs. Dr. Stevens, of St. Louis, was a niece of Mrs. Lockwood, and very much resembled her in personal appearance. Soon after the election of 1860, Mrs. Stevens met Mr. Lincoln, at the home of a mutual friend in Springfield, and was introduced to him as president-elect, and she gives this account of the interview: "Mr. Lincoln took me by the hand, and drew his face nearer and nearer to mine, till I was frightened; when he said, 'Are you a relative of Mrs. Lockwood?' I replied, I am proud to say she is my aunt; and he said, 'You may well be proud, for she is the best woman God ever made.'"

Dr. T. M. Post, of St. Louis, whose beautiful tribute to Judge Lockwood we have given elsewhere, adds the following with reference to his wife: "I was charmed with the rare Christian loveliness of Mrs. Lockwood, and my recollections of her then, and subsequently, will ever be among the pleasantest memories of my past life. Her great sweetness, gentleness, and radiancy of manner and of spirit,—her guileless simplicity and godly sincerity, her devoted and cheerful piety,—her overflowing genial sympathies and delicate self-sacrificing kindness, made her to me an incarnation of much that is loveliest in woman."

In the history of the Batavia Church is found this tribute: "Her life brought much of heaven to earth, and her death took much from earth to heaven."

The Christian family and home established by this union was for forty-eight years the center of all that is pure, lovely and holy; whose influence for good can not be marked by any scale of human measurement.

In the light of such a record the modern question, Is marriage a failure? seems well-nigh blasphemous.

In Judge Lockwood's opinion marriage was a most sacred institution, and applicants for divorce never found any favor in his court. The present lax opinions on that subject, he would have regarded as highly immoral and dangerous.

The marriage union thus formed was blessed with four daughters, all of whom reached mature and married life. Mary, born in Springfield, May 18, 1828, was married in Jacksonville, in 1847, to William Coffin, the author of this sketch, and removed at the same time with her parents to Batavia, where she passed from earth on June 23, 1877. Susan, born in Jacksonville, October 10, 1830, married Charles W. Porter, and is now a resident of Hudson, Wis. Martha, born in Jacksonville, February 14, 1833, married J. Scott Officer, and died at Delavan, Wis., March 3, 1864. Anna, born in Jacksonville, June 7, 1838, married the Rev. Wm. E. Merriman, and is now living in Boston.

Judge Lockwood took an active part in the organization of the Republican party, and in the grand work it accomplished. During the war he felt in his own person the shock of every battle, and his heart warmed with sympathy for every bereaved patriotic family. He mourned for Lincoln, as a father might mourn over a son, untimely slain.

The closing years of Judge Lockwood's life were passed in quiet retirement at his home in Batavia, a home distinguished for domestic happiness and genial hospitality. There was nothing of ostentation about it, no formal receptions or grand entertainments; but friends of the olden time, and new acquaintances, ever found in it a cheerful welcome, and young and old were benefited by its pure atmosphere. And here on the 23d of

April, 1874, Judge Lockwood, in his eighty-fifth year, and in the full possession of his mental powers, passed peacefully to the spirit world. The life thus closed was pre-eminently a successful one. Judge Lockwood was permitted to see the grand enterprises of his early life in a wonderful degree successful, and rich in beneficial results—Illinois a free state, in a union of commonwealths equally free—educational and benevolent institutions firmly established, and the whole land most abundantly blessed by the God of our fathers. Greatly averse to debts of every description, and carefully avoiding all such personal embarrassment, he was for many years connected with institutions heavily burdened in this direction, and for several years saw the state he loved trembling on the verge of bankruptcy and repudiation. He lived to see these burdens removed, the state free from debt, with a credit second to none of her sisters. His last residence was in a county and township free from pecuniary demands, and his family connection was with a church, largely through his liberality, unencumbered. He owed no man anything but love, and this indebtedness he met in daily installments of charity for all.

Mrs. Lockwood survived her husband not quite a year, as she passed from earth to heaven, on March 27, 1875.

APPENDIX.

OBJECTIONS OF THE COUNCIL OF REVISION TO THE BILL REORGANIZING THE JUDICIARY OF THE STATE.

(Referred to on page 80.)

The undersigned, members of the Council of Revision, have had under consideration the bill entitled "An Act to reorganize the Judiciary of the State of Illinois," and having bestowed upon it that attentive consideration which the nature and importance of its provisions demand, feel constrained to return the same to the senate as improper to become a law, because, in the judgment of the undersigned, its passage would be fraught with incalculable evils to the people of this state.

The first objection which presents itself is the sweeping repeal of all acts and parts of acts establishing circuit courts in this state. How far this repeal may affect important interests cannot be clearly foreseen, and may occasion much mischief.

The bill nowhere, in express terms, provides for the creation or reëstablishment of circuit courts in each of the counties of this state. By the seventeenth section of the "Act regulating the Supreme and Circuit Courts," passed 19th January, 1829, it is declared that "it shall be the duty of the said judges respectively to hold two terms annually in each county in their respective circuits in conformity to law; which courts shall be holden respectively at the times and places now or hereafter to be prescribed by law, and the said courts shall be styled circuit courts for the counties in which they may be held respectively." The eighteenth section of said act confers jurisdiction on said circuit courts "over all matters and suits at common law and in chancery;" and the twentieth section of said act confers criminal jurisdiction. Now, if the first section of the bill repealing

all laws establishing circuit courts repeals these provisions of the judiciary act of 1829, may not doubts hereafter arise whether the present bill provides for the reëstablishment of a circuit court to be held in each county in the respective circuits which can be considered the legal successor of the repealed courts? Can it be said to follow as a necessary consequence, because the third section of the bill divides the state into "nine judicial circuits," that therefore there is reëstablished circuit courts in each of the counties of this state?

Does not the fourth section of the bill leave the question as uncertain as the third? This section provides for continuing "over to the circuit courts created by this act all suits," etc. Where, it may be asked, is the provision in the bill creating circuit courts in each of the counties of the state? This ambiguity in the phraseology of the bill may lead to doubt and uncertainty in its construction.

The bill is also defective in not providing that the newly-created circuit courts, if such there be, shall have power to issue execution on judgments and decrees already rendered in such repealed courts. This omission may occasion much embarrassment to judgment creditors and suitors in chancery.

The bill is, however, obnoxious to objections of a graver character than those above referred to, as it respects its operation upon the interests of the people of this state.

It is believed by the undersigned that the system proposed to be put in operation by this bill will be found to be wholly inadequate to the wants of a great and growing community like ours, and to impose burdens upon the people inconsistent with the speedy and proper administration of justice. The attention of your honorable body is therefore respectfully invited to some considerations that the undersigned deem important to be kept in view in coming to a just conclusion upon this subject, and which will be presented in as concise and intelligible a form as the nature of the task and the pressure of other important and urgent duties will allow.

The bill under consideration, after repealing out of office all the circuit judges, provides for the appointment of five judges of the supreme court, who, together with the four now in office,

are required to hold the supreme court and all the circuit courts in the state. This is a requisition, in the opinion of the undersigned, that will be found physically impossible. There are now nine circuit judges, who have no other duties to perform, than to hold the circuit courts. Yet, without any fault on their part, but from the magnitude of the business and the want of time, they have been unable to do the business in these courts. This fact is notorious to all conversant with judicial proceedings and to many members of the legislature, and is also confirmed beyond doubt or denial by the dockets of these courts, which show that hundreds of causes in a large number of the populous counties have remained untried from term to term for the want of time to reach them in their order on the dockets, thus occasioning great expense, vexation and loss of time to parties and witnesses. When, therefore, the judicial functions of the supreme and circuit courts, and those of a council of revision also, are all devolved upon nine judges, it must be manifest to the most superficial observer, as well as those in any degree acquainted with the nature and extent of these duties, that they are greater than are compatible with the abilities of that number of judges to accomplish, and consequently greater than accords with the best interests of the people. Should any one be disposed to doubt the correctness of this proposition, that doubt can be easily removed by the simple rule of addition. By adding the time which the judges of the supreme court are necessarily occupied in presiding in that court and acting as a council of revision to the time required to accomplish the business in the circuit courts, it will be seen that fifty-two weeks are inadequate to the performance of all these multifarious duties in the order of succession in which they must be performed by the nine proposed judges.

The constitutional and paramount obligations of the judges of the supreme court are: to act as members of the council of revision during the sessions of the legislature, and to preside in the supreme court until all the business of that court is disposed of. The time that will be thus occupied this winter, including travel to and from the seat of government, will not fall short of four months, even under the supposition that the supreme court

will be ready to adjourn as soon as the legislature, which was not the case last winter.

The business of the summer term of the supreme court, including necessary traveling to and from court, will require from six to eight weeks. The last summer term occupied those who live most remote from the seat of government six weeks, and the business has increased since that time; but allowing only seventeen weeks for the winter terms and seven weeks for the summer terms, including travel, and the time occupied by the judges of the supreme court at the seat of government will be twenty-four weeks. Take then, for example, the ninth circuit, and suppose the judge of that circuit immediately on his return home should commence holding the circuit courts. It would require twenty-six weeks, as the law now stands, to hold the spring and fall circuits, and still leave an immense amount of business untouched for want of time. This circuit is referred to because the information in relation to the length of time the courts were held in it last year, and the crowded state of the dockets, can be relied on. It then clearly appears, if this bill goes into operation, that the judge who shall be assigned to this circuit will be required, in addition to twenty-four weeks occupied at the seat of government, to hold circuit courts for twenty-six weeks more, and still leave a great amount of business untouched.

In several of the circuits it is confidently stated by individuals well acquainted with the subject, that unless the terms are lengthened at least one-half, that the business of these courts will remain on the dockets for years without any possibility of the suits being tried or disposed of.

In making this calculation, the undersigned have taken for their data the time actually employed at the seat of government and the time employed in holding the courts in the ninth circuit under the existing law. When, therefore, it is taken into consideration that the business of the supreme court is rapidly increasing, and that the time allowed by law to many of the circuit courts is so much too short that, with all the exertion of the judges, not more than half or two-thirds of the business can be performed, it is clear that the time allowed to these circuit

courts must be greatly extended or the circuits divided and additional judges appointed, otherwise there will be such a delay in the administration of justice as will be, in many cases, equivalent to a denial.

From this view of the nature and extent of the judicial business of this state, it must be apparent to the understanding of every man that it is physically impossible for nine judges to perform the duties enjoined upon them by this bill. But suppose it was possible that, by a total abandonment of their homes and a consequent neglect of their families and private business, they could, by an entire devotion of their minds and bodies to the service of the state, make out to hurry through the business of the courts, and decide all the causes as they might be ready for trial, the undersigned would respectfully ask, Is it good policy on the part of the state, or is it just and liberal in the legislative department of the government to impose upon a coördinate branch of the government burthens so onerous and unprecedented? The undersigned forbear to remark upon the character of the measure in reference to the judiciary, but may be allowed to say that, in their judgments, the operation of the bill will be prejudicial to the rights of the citizens and the character of the state. Judicial decisions in courts of the last resort not only affect the interest of the suitors, but, like legislative enactments, are of importance to the whole community, because they form rules of future action.

It frequently becomes the duty of the supreme court to adjudicate upon the most intricate, grave and important causes, and in so doing the court must necessarily settle principles of the greatest importance, whether considered in reference to the immediate amount involved, the sacredness of the rights affected, or the extent and universality of their application. As the judgment of this tribunal is final, it must be apparent that an erroneous decision may occasion the most extensive and irreparable mischief. It is, therefore, of the highest importance that every opportunity should be afforded this tribunal for a full and thorough investigation of the causes brought before it. The questions this court may be thus called upon to decide are not only of vital importance in their nature and results, but may be

proportionably intricate and embarrassing in their character. Will it then be contended that, in such a case, the court should decide upon first impressions, without time and opportunity to examine it in all its aspects and bearings? The fate of this bill will determine. At each term of the supreme court there are from thirty to fifty causes continued to the succeeding term in order to have an opportunity of investigating all the points involved, to examine the records in the causes, to search for and compare authorities, and, when a result is arrived at and agreed upon, then to write out their opinions, so as not only to settle the controversy between the parties, but to serve as a rule for the government of similar cases. The discharge of this laborious and responsible duty, it must be manifest to every understanding, cannot be accomplished in a few days. The principal duties of a judge upon the circuit ends with the adjournment of the court. But it is far otherwise with the members of a court of the last resort. The investigation of causes continued under advisement forms the most laborious part of their official functions, and the most of the time allowed under the present arrangement may be thus profitably employed.

The organization of the courts proposed by the bill is obnoxious to another objection, so deeply affecting the rights and interests of every portion of society that the undersigned cannot refrain from calling your attention to the subject. For nearly half of the year all the judges, by this bill, will be drawn to the seat of government, and, consequently, the performance of all their functions must cease in every other portion of the state. It results, as a necessary consequence, that many writs and orders, that are absolutely necessary in the administration of justice, must be obtained from those judges at considerable expense and delay of suitors. This objection, however worthy of consideration, is, nevertheless, of small moment when compared with other consequences arising out of the detention of all the judges of the state at the seat of government. The passage of this bill will totally preclude the possibility of holding special terms for the dispatch of civil business or for the trial of persons committed to jail for crime, a matter of vital importance, as well to the whole community as to the prisoner. It is

well known that the jails in many of the counties are very insecure. This circumstance is often the cause of heavy expense to such counties, by compelling them to hire a guard. In addition to the heavy burthens thus unnecessarily thrown upon counties in guarding and in supporting prisoners for nearly half a year, the rights of the prisoners are also disregarded by being detained in an uncomfortable jail during the most inclement season of the year and thus subject to much deprivation and suffering before trial. Any unnecessary suffering inflicted on those charged, but not convicted of crime, is equally at war with the principles of justice and humanity. Should the prisoner, however, be found innocent of the charge, his long imprisonment and suffering will be a serious reproach to the institutions of the country, as well as an unmerited and irreparable calamity to the injured individual, who is left without remuneration for his lost time and without redress for his aggravated sufferings. It is undoubtedly the duty of the state to provide for the prisoner as early a trial as the circumstances of the country will permit. This is guaranteed by the express terms of the constitution, and is dictated by justice and humanity. But neither the spirit of the constitution nor the principles of justice can be carried into efficient operation under the judicial system proposed by this bill.

The passage of this bill may also seriously interrupt the sessions of the circuit courts if, during their sessions, there should arise any emergency for a special call of the legislature. The judges would then be under the necessity of immediately abandoning their circuits and leaving their business, no matter how great or how pressing, undisposed of, to attend at the seat of government. The bill makes no provision for a state of things, which, in the opinion of the undersigned, may work great injury and inconvenience to persons now suitors in court. Some of the circuit courts are now, according to law, in session, and will doubtless continue in session until they are apprised, in an official manner, of the final passage of this bill. All their adjudications and proceedings, after this bill becomes a law, will be null and void, and all persons concerned in executing the same, or any process under them, will be trespassers.

The undersigned can perceive no reason in the fact that, because the legislature in January, 1827, repealed the circuit court system, it would be proper and expedient to do so now. Since that time the population of this state has increased from about seventy-five thousand to near half a million, and in greater proportion than the increase of population has been the increase of business. Our wants have become multiplied and complicated with every accession to our population. At the time of the former repeal of the circuit system there were but thirty-eight counties in this state, many of them having hardly business enough to occupy the courts for one day. Now the case is entirely different. We have nearly one hundred counties, many of them with an extremely numerous, enterprising and business population, demanding from the government an *increase* of the facilities for enabling them to assert and determine their legal rights, instead of a *diminution* of those to which they have been accustomed for years past. In many of the circuit courts of this state, it has been found impossible to dispose of the business that has been accumulating within the last three or four years, although the legislature has doubled, and in some instances trebled, the length of time formerly allowed them for holding their courts. This, however, is not a matter of surprise. It is the inevitable effect of the march of civilization and prosperity.

The undersigned are, therefore, clearly of opinion that what may have been wise and prosperous then, may be highly impolitic, nay, even ruinous now.

Nor do they believe that an argument can be drawn in favor of the proposed plan for the system adopted by the federal government in the organization of her judiciary department. That system doubtless is found to work well in practice, and answers the purposes to which it was designed. But it must be borne in mind that the Supreme Court of the United States does not form a council of revision, as do the judges of the supreme court of this state. That the federal courts are courts of limited and defined jurisdiction, having no right to adjudicate upon cases, except in a very few instances, where it was supposed or feared that the state courts would not afford adequate relief to

one or other of the parties. This prevents, to a great extent, the overwhelming increase of business in those courts which takes place in our own, and renders a system inapplicable to us, applicable and proper to them. In addition to this, the undersigned would remark that the jurisdiction of those courts extends over twenty-six states — each having a distinct and separate system of laws and practice — and which laws and practice, except in a few cases, are to be adopted by the federal courts. These circumstances may render it highly proper that the judges of the Supreme Court of the United States should perform circuit duties and acquire a knowledge of the practice and laws of those states, with reference to which they are called upon to give their opinions at Washington city. But, surely, no such state of things exists here. There is not a distinct code of laws or system of practice applicable to each of the counties of this state. One uniform system prevails over the whole.

In every part it is, or should be, the same. Certainly, then, no analogy can be found to exist between the judiciary system of the federal government and that of this state from which an argument could be drawn in favor of the system proposed by this bill. Perhaps it may not be amiss here to inquire, if the system of the federal judiciary would be useful and proper for the adoption of the states, why some of the neighboring states, whose condition and circumstances are similar to our own, have not before this time adopted it, and thus availed themselves of its benefits?

In every point of view in which the proposition contained in the bill before us has presented itself, difficulties and obstacles arise, so great and manifest, that the undersigned are constrained by a sense of duty to the country to return the bill with their objections.

WM. WILSON.
S. D. LOCKWOOD.
T. C. BROWNE.

February 8, 1841.

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